

**CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
December 21, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard**

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

- 1. Public Employee Performance Evaluation/Appointment/Dismissal/Release
(Pursuant to Government Code Section 54957)
Title: City Manager**

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES: December 7, 2004

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS (None)

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. ANNOUNCEMENT OF CONFLICT OF INTEREST

XI. MOMENTS OF REFLECTION

XII. APPROVAL OF AGENDA

XIII. CONSENT CALENDAR (Items with Asterisks)

XIV. PUBLIC HEARINGS

- 1. Approve Major Tentative Map No. MA2004-4 to Create (1) Commercial Condominium and Ninety-Six (96) Residential Condominiums for the Apton Plaza Project - 230 North Main Street (Staff Contact: Staci Pereira, 586-3278)**
- 2. Introduce Ordinance No. 124.37 amending Title XI Chapter 30 (Signs), Amending Title XI-10 (Planning, Zoning and Annexation) and Amending Chapter V-500 (Neighborhood Beautification) of the Municipal Code (P-ZT2004-2) and Approve Transition from Complaint Driven to Pro-Active Enforcement. (Staff Contact: Tambri Heyden, 586-3280)**

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor

RA2. Roll Call

RA3. Approval of Minutes: December 7, 2004

RA4. Approval of Agenda and Consent Calendar (Items with Asterisks)

RA5. Approve Conceptual Design; Library Project (Project No. 8162) (Staff Contact: Mark Rogge, 586-3403)

***RA6. Direct Staff to Enter Discussions with Intersil Corporation on Retention Incentives (Staff Contact: Blair King, 586-3060)**

***RA7. Approve Amendment to Memorandum of Understanding and Owner Participation Agreement (OPA) with Apton Properties to Change the Proposed 96-Unit Apartment Complex to a Condominium Project (Staff Contact: Felix Reliford, 586-3071)**

RA8. Agency Adjournment

XVI. REPORTS OF OFFICERS AND BOARDS

City Council

- 3. Consideration of Including a Non-Denominational Invocation at City Council Meetings: Mayor Esteves**
- 4. Consideration of the Citizens Forum Two-Minute Speaking Time Limit: Mayor Esteves**
- 5. Consideration of Assistance to the Milpitas Food Pantry and the Milpitas Chamber Of Commerce: Mayor Esteves**
- 6. Consideration of Possibly Re-Establishing The Reach (Recreation Enhancing Assisted Children's Health) Program: Mayor Esteves**

Community Advisory Commission

- * 7. Approve the 2005 Community Advisory Commission (CAC) Work Plan (Staff Contact: Dennis Carrington, 586-3275)**

XVII. UNFINISHED BUSINESS

- 8. Planning Commission Appointment Process to Fill Vacancies and Terms Expiring December 2004 (Staff Contact: Gail Blalock, 586-3001)**

XVIII. NEW BUSINESS

- 9. Approve Final Ethics Awareness Survey Draft and Date for Final Council Ethics Training and Decide Whether to Conduct a Second Make-Up Session for Commissioners (Staff Contact: Tambri Heyden, 586-3280)**

XIX. ORDINANCES

10. **Introduce Ordinance No. 267 Repealing Section 1-310-9.10 of Title 1 of the Milpitas Municipal Code and Adding a New Chapter 330 to Title 1 Establishing a Lobbying Ordinance (Staff contact: Tambri Heyden, 586-3280 and John Bakker, 586-3040)**

XX. RESOLUTIONS

- * 11. **Adopt Resolution Granting Initial Acceptance: Barber Bellew Traffic Signal Installation, Project No. 4212 (Staff Contact: Jeff Leung, 586-3326)**
- * 12. **Adopt Resolution Granting Final Acceptance: Off-Leash Dog Park (Project No. 5072) (Staff Contact: Doug DeVries, 586-3313)**

XXI. BIDS AND CONTRACTS

- * 13. **Approve a Contract Change Order: Diversified Fire Products; Civic Center (Project No. 8026) (Staff Contact: Greg Armendariz (586-3401)**
- * 14. **Approve Purchase Order to Raines, Melton & Carella for Additional Sewer Modeling (Staff Contact: Darryl Wong, 586-3345)**
- * 15. **Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals: Coyote Creek Trail, Reach 1 (Project No. 4206) Nolte Associates, (Staff Contact: Greg Armendariz, 586-3401)**
- * 16. **Award Underground Storage Tank Inspection, Reporting And Training Services To Monette Consulting Services (Staff Contact: Jorge Bermudez, 586-3404)**
- * 17. **Award Contract: California Textiles, Inc.: Mechanical Sun Screen; Civic Center (Project No. 8026) (Staff Contact: Jorge Bermudez, 586-3404)**
- * 18. **Award Contract: Ireland Interiors; Building Improvements Project, CP-8135 (Staff Contact: Greg Armendariz, 586-3401)**
- * 19. **Approve Agreement Amendment: 4 LEAF Inc., Silicon Valley Intelligent Transportation System (ITS) (Project No. 4219) (Staff Contact Mike McNeely, 586-3301)**
- * 20. **Approve Contract Change Order: Main Sewage Pump Station Demolition (Project No. 6079) (Staff Contact: Steve Erickson, 586-3414)**

XXII. CLAIMS AND DEMANDS

- * 21. **Approve Payment to Santa Clara County for November 2, 2004, Election Costs (Staff Contact: Gail Blalock, 586-3001)**
- * 22. **Approve Premium Payment for Excess Workers' Compensation Insurance (Staff Contact: Cherie Rosenquist, 586-3082)**

XXIII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, JANUARY 4, 2005, AT 7:00 P.M.**

CITY OF MILPITAS
Agenda Reports
Milpitas City Council Meeting
December 21, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

XIV. PUBLIC HEARINGS

- 1. Approve Major Tentative Map No. MA2004-4 to Create (1) Commercial Condominium and Ninety-Six (96) Residential Condominiums for the Apton Plaza Project - 230 North Main Street (Staff Contact: Staci Pereira, 586-3278)**

Background: On April 14, 2003, the Planning Commission reviewed “S” Zone (SZ2002-4) and Use Permit (UP2002-35) applications for a 5-story, mixed use development consisting of 102 rental residential units and 6,000 square foot of retail that exceeded the height and setback regulations for the MXD-TOD district. An amendment to the project was reviewed by the Planning Commission on April 26, 2004 and approved by the City Council on September 17, 2004. The modifications included reductions in number of units, retail floor area, number of stories, building height and number of parking spaces as well as minor exterior changes.

The applicant is requesting a major tentative tract map to create 96 residential condominiums and one commercial condominium which could each be sold individually. No project site or building modifications are proposed with this application.

The Planning Commission reviewed the application and recommended approval at its meeting on December 8, 2004. At this meeting, staff submitted revised conditions, that addressed previous concerns of the applicant, to the Planning Commission in the form of a memorandum. The applicant is in agreement with the revised conditions, which have been incorporated into the recommended Conditions of Approval included in the Council’s agenda packet

Recommendation:

1. Close the public hearing.
2. Approve the Tentative Tract Map No. MA2004-4.

- 2. Introduce Ordinance No. 124.37 amending Title XI Chapter 30 (Signs), Amending Title XI-10 (Planning, Zoning and Annexation) and Amending Chapter V-500 (Neighborhood Beautification) of the Municipal Code (P-ZT2004-2) and Approve Transition from Complaint Driven to Pro-Active Enforcement. (Staff Contact: Tambri Heyden, 586-3280)**

Background: At the May 18, 2004, Council meeting, the Council approved a proposal to expand the City’s code enforcement program by proceeding with amendments to the Neighborhood Beautification Sign and Zoning Ordinances. The amendments were intended to reduce notification timeframes, add administrative citations to the sign code, enable fines without notice for certain violations and require temporary sign registration. The approved proposal also included transitioning from complaint-driven to pro-active enforcement and instituting weekend enforcement. Staff presented the proposed changes to the Sign, Zoning and NBO texts to the Community Advisory Commission related to expanding the City’s Code Enforcement Program on September 1, 2004 and December 1, 2004 and to the Economic Development Commission on September 13, 2004 and December 13, 2004. Comments were received and incorporated into the Draft Ordinance included in the Council’s agenda materials. The Economic Development Commissions’ support includes the details for pro-active enforcement discussed in the background report included in the Council’s packet.

At the October 5th City Council meeting, the Council directed that two task forces be formed to provide more detailed review and input – a Code Enforcement Task Force and a Sign Code Task Force. Fourteen persons served on the Code Enforcement Task Force and twenty-six persons

served on the Sign Code Task Force. The Code Enforcement Task Force met twice and the Sign Code Task Force met six times. In addition, two business community meetings were held. Both task forces support the proposed amendments and the majority support the proposal to transition from complaint driven to pro-active enforcement. In addition, the Sign Code Task Force recommends that the City Attorney update the political sign section of the code to include a restriction on number of candidate signs per parcel.

The proposed changes achieve three objectives: a) ordinance clarity, b) economic development and flexibility and c) enhanced aesthetics. The amendments reorganize the Sign Ordinance to provide definitions for several terms or sign types, move several isolated regulations into separate sections, provide a more effective Sign Program procedure for commercial and industrial sites, create Construction Signs, Joint Use Signs, Portable Sign and Temporary Promotional Sign categories, enhance the Sign Program process, provide administrative citation authority in the Sign Ordinance and address the violations sections of the Sign Ordinance and the Neighborhood Beautification Ordinance. These changes will make the ordinances easier for staff to implement and for the public to understand. A detailed explanation of each amendment is reflected on the executive summary matrix included in the Council's agenda materials.

Generally, the amendments can be summarized as follows:

Amendments to the Sign Ordinance:

- 1) Provide definitions for several types of signs.
- 2) Reorganize the Sign Ordinance to move several isolated but related provisions into their own stand-alone sections, make the ordinance better organized and to correct typographical errors.
- 3) Provide a matrix showing sign approval method by type of permit and by zoning district.
- 4) Expand the existing Design Guidelines for signage.
- 5) Provide regulations for Balloon Signs, Construction Signs, Joint Use Signs and Temporary Promotional Signs.
- 6) Require that Garage Sale signs not exceed 6 square feet per side, be free-standing if on public property, regulating their location, when they can be displayed and limiting the number of signs at an intersection.
- 7) Require that Open House Directional Signs be free-standing if placed in the right-of-way, and allowing a maximum of two signs to be located at a given intersection for each property advertised.
- 8) Provide a stand-alone section regulating permitted signs and providing such regulations.
- 9) Provide an enhanced Sign Program approved by the Planning Commission pursuant to an "S-Zone Approval".
- 10) Expand the Signs Exempted section to add several types of signs.
- 11) Provide a stand-alone section "Prohibited Signs" which would regulate prohibited signs.
- 12) Define "Continuing Violation".
- 13) Define "Individual Violation".
- 14) Provide for administrative citations for violations of the Sign Ordinance.
- 15) Provide an abatement procedure similar to that in the Neighborhood Beautification Ordinance.
- 16) Provide an appeal procedure to the City Council from decisions of the City Manager/Designee.

Amendments to the Zoning Ordinance

- 1) Clarify and expand the Zoning Ordinance administrative citation provisions.
- 2) Provide an abatement procedure similar to that in the Neighborhood Beautification Ordinance.
- 3) Define terms relating to the abatement procedure.
- 4) Define "Continuing Violation".
- 5) Define "Individual Violation".
- 6) Provide an appeal procedure to the City Council from decisions of the City Manager/Designee.

Amendments to the Neighborhood Beautification Ordinance:

- 1) Define "Continuing Violation".
- 2) Define "Individual Violation".
- 3) Provide an appeal procedure to the City Council from decisions of the City Manager.
- 4) Change the time period for "Unreasonable Period of Time" from thirty (30) days to fifteen (15) days to shorten the time that nuisances exist before they are cleaned up.

ENVIRONMENTAL REVIEW

The project is exempt from the provisions of the California Environmental Quality Act (CEQA) because it can be seen with certainty that there is no possibility that the ordinance text amendments may have a significant effect on the environment. The proposed text amendments will reorganize and clarify the Sign Ordinance, address violations in the Sign Ordinance and NBO and provide for Administrative Citation authority in the Zoning Ordinance. These changes will not have a significant effect on the environment.

On December 8, 2004, the Planning Commission unanimously recommended that the City Council adopt Ordinance 124.27. An excerpt of the minutes is included in the Council's agenda materials.

Recommendation:

1. Close the public hearing.
1. Waive reading beyond title.
2. Introduce Ordinance No. 124.27.
3. Approve transition from complaint-driven to pro-active enforcement.
4. Authorize proceedings with updating the political sign section of the sign code, including adding a provision limiting the maximum aggregate area of political signs per candidate on a parcel.

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor

RA2. Roll Call

RA3. Approval of Minutes: December 7, 2004

RA4. Approval of Agenda and Consent Calendar (Items with Asterisks)

RA5. Approve Conceptual Design; Library Project (Project No. 8162) (Staff Contact: Mark Rogge, 586-3403)

Background: The conceptual design phase has been completed for the library project. Staff will provide the Council with a presentation and recommendation from the Library Subcommittee.

Recommendation: Approve the conceptual design as recommended by the Library Subcommittee.

***RA6. Direct Staff to Enter Discussions with Intersil Corporation on Retention Incentives (Staff Contact: Blair King, 586-3060)**

Background: Intersil Corporation is a semiconductor firm headquartered in Milpitas. They are considering consolidating their facilities in Milpitas or relocating to Florida. Mintax, Inc., is a business relocation consultant representing Intersil's interests. Mintax, Inc. has requested discussions with Redevelopment Agency staff regarding possible business retention incentives that may be available from the RDA if Intersil remains located in Milpitas. Their request letter is included as an attachment to the mailed Council agenda.

Recommendation: Direct staff to enter discussions with Intersil Corporation regarding retention incentives that may be available.

***RA7. Approve Amendment to Memorandum of Understanding Owner Participation Agreement (OPA) with Apton Properties to Change the Proposed 96-Unit Apartment Complex to a Condominium Project (Staff Contact: Felix Reliford, 586-3071)**

Background: At its meeting on September 7, 2004, the Redevelopment Agency adopted a resolution approving the execution of an Owner Participation Agreement (OPA) with Apton Properties for development of a mixed use project that will include 3,000 square feet of commercial space and 96 apartment units at the northeast corner of N. Main Street and Weller Lane. The Redevelopment Agency assistance was authorized specifically for the development of 19 deed-restricted affordable rental-housing units of which 9 were to be available to very low-income households and 10 to moderate-income households. The Council approved the Memorandum of Understanding (MOU) for the financial assistance at its meeting of May 18, 2004.

Since the Redevelopment Agency's approval of the OPA, Apton Properties has decided to change the rental units to condominiums. This proposed change requires the Agency to approve an amended OPA to incorporate reference to "for-sale" condominium units.

The amendment to the OPA does not impact or change the financial terms of the agreement. The OPA still commits a total of \$1.23 million in affordable housing funds for the development. Funds are pledged in the form of an \$852,560 grant for permits and fees and a \$378,000 construction loan related to the 19 affordable units.

At its meeting on December 8, 2004, the Planning Commission reviewed the proposed project amendment and recommended approval to the City Council. A copy of the amended OPA for adoption is included in the Agency's agenda packet. The participant has signed the amended OPA indicating acceptance.

Recommendation: Approve the amended Memorandum of Understanding and Owner Participation Agreement (OPA) with Apton Properties to authorize substitution of apartment units for condominium units

RA8. Agency Adjournment

XVI. REPORTS OF OFFICERS AND BOARDS

City Council

3. Consideration of Including a Non-Denominational Invocation at City Council Meetings: Mayor Esteves

Background: At the May 6, 2003, City Council meeting, the Council considered having a non-denominational invocation at the start of Council meetings. The action taken at that meeting was to table the item until it was brought back to the Council by the Mayor. Mayor Esteves is requesting that the Council reconsider this issue.

Recommendation: Consider having a non-denominational invocation at City Council meetings.

4. Consideration of the Citizens Forum Two-Minute Speaking Time Limit: Mayor Esteves

Background: Mayor Esteves is asking that the City Council discuss for possible modification the two-minute speaking limit on the Council Agenda for Citizens Forum.

Recommendation: Discuss two-minute speaking limit for Citizens Forum.

5. Consideration of Assistance to the Milpitas Food Pantry and the Milpitas Chamber Of Commerce: Mayor Esteves

Background: Mayor Esteves is requesting that the Council direct staff to review and report back to the Council on the possibility of the City providing assistance to the Milpitas Food Pantry and the Milpitas Chamber of Commerce in terms of space as both agencies are facing lease expirations.

Recommendation: Consider the Mayor's request and direct staff accordingly.

6. Consideration of Possibly Re-Establishing The Reach (Recreation Enhancing Assisted Children's Health) Program: Mayor Esteves

Background: Mayor Esteves is requesting that the Council direct staff to review and report back to the Council on the possibility of re-establishing the REACH (Recreation Enhancing Assisted Children's Health) Program. The City's involvement with the REACH Program ended in 2000. The program's goal was to provide social and recreational based activities and opportunities for disabled youth, teens, and young adults in the community.

Recommendation: Consider the Mayor's request and direct staff accordingly.

Community Advisory Commission

*** 7. Approve the 2005 Community Advisory Commission (CAC) Work Plan (Staff Contact: Dennis Carrington, 586-3275)**

Background: At the end of every calendar year the Community Advisory Commission (CAC) prepares an annual work plan for City Council consideration and approval. At the December 1, 2004, meeting, the CAC prepared and unanimously approved the work plan shown below. Many of the goals/projects are carried over from the 2004 work plan as they are underway. No new additions were made. The proposed work plan is as follows:

Annual recurring tasks

- Heritage tree nominations (January, May, October) Note: This will not begin until the drafted ordinance is finalized and approved by the City Council.
- CDBG public hearing process. (March)
- Participate in Arbor Day – NBO booth and Tree City USA designation (April), Global Village (May of even-numbered years), and 4th of July parade. (July)
- National Night Out. (August)
- Thank You Activity/Recognition for City Staff. Participate yearly in preparation for the annual employee service awards celebration. (September)
- Neighborhood Beautification Awards. (September)
- Review City Calendar photos. (October)
- Tree Trimming. (November)
- Work session for annual work plan. (December)

Short-term Goals/Projects

- Tree Planting – Complete a heritage tree ordinance (in progress) and promote tree planting through outreach and tree protection measures.
- Ethics First! Program – Continue work on the Ethics First! Program through the end of the contract and review the final report for long-term recommendation to the City Council.
- Neighborhood Preservation/Street Sweeping – Assess whether neighborhoods are overcrowded and recommend strategies to preserve neighborhoods (in progress).

- Town Hall Meeting – Review to determine whether to continue this Fall event.
- Associations Meeting – Develop an outreach program to neighborhood associations to obtain feedback on community issues.

Recommendation: Approve the Community Advisory Commission's proposed 2005 work plan.

XVII. UNFINISHED BUSINESS

8. Planning Commission Appointment Process to Fill Vacancies and Terms Expiring December 2004 (Staff Contact: Gail Blalock, 586-3001)

Background: There currently are two vacancies on the Planning Commission; one vacancy was created by the resignation of Dem Nitafan effective July 28, 2004, and the other created by the recent resignation of Councilmember Giordano effective November 18, 2004. In addition, the term of Commissioner Gurdev Sandhu expires this month (December 2004). On August 3, 2004, the Council considered Mr. Nitafan's vacancy and directed staff to use the same process as previously used for filling Planning Commission vacancies so that the position might be filled in 60 days. Staff ran a "Request for Applications" advertisement in the *Milpitas Post* for three consecutive weeks beginning August 12, 2004, as well as having the information and application available on the City's web site.

At the September 21, 2004, City Council meeting, the Council received a report that only one application had been submitted. The Council directed staff to extend the application period and to include terms expiring December 2004 in the recruitment. As of the printing of the agenda, eight applications have been submitted.

Recommendation: Review applications and direct staff accordingly.

XVIII. NEW BUSINESS

9. Approve Final Ethics Awareness Survey Draft and Date for Final Council Ethics Training and Decide Whether to Conduct a Second Make-Up Session for Commissioners (Staff Contact: Tambri Heyden, 586-3280)

Background: One of the remaining deliverables under the ethics project contract with Dr. Shanks is preparation and distribution of a final ethics program awareness survey. The results of the survey will be included in Dr. Shanks' final report due to the City on January 31, 2005. Unlike the distribution of the initial survey in March that was on-line for completion by a random sample of Milpitas households, the final survey will be published in the *Milpitas Post* for readers to tear out and mail to the City by January 20, 2005. While the format of the final survey is patterned after the initial survey, newspaper distribution of the final survey is proposed to obtain a greater number of respondents. Respondents can be individuals who live or work in Milpitas who are over the age of 18.

The final ethics survey draft is included in the Council's agenda materials. The intent of the survey is to determine the effectiveness of the ethics program in building public trust and to gauge how well Milpitas public officials are doing practicing the City's Ethics Code core values of honesty, respect, fairness, stewardship, teamwork, and accountability. Thus, survey questions seek to find out how familiar respondents are with the ethics program; how they heard about the program; whether they voted in the local election; how useful the forums, Ethics First! educational pieces, newspapers articles and endorsements and materials published by candidates and their supporters were in making voting decisions; how effective various ethics implementation methods would be on the next three elections; and the degree of fairness of several examples of campaign candidate behavior.

Other components of the ethics program are also winding down. All candidate, senior staff, Commissioner, staff liaison and ethics evaluator training sessions have been completed. The

Council set its final training session for November 17, 2004. However, as noted in the City Manager's weekly Council report, this session was postponed given a new Councilmember was elected. It is recommended that the final training be rescheduled to early January, after the holidays and before the end of Dr. Shanks' contract. Tuesday, January 11, 2005, at 6:00 p.m. is suggested.

Regarding Commissioner training, 74 out of the City's 125 Commissioners received training at one of the two sessions that were offered in October. Given that training is mandatory, the Ethics Steering Committee recommends that a second make-up session be offered to ensure all Commissioners participate in the program. There will be no additional cost to the City for this session given the structure of Dr. Shanks' contract.

Recommendation: The Ethics Steering Committee recommends that the City Council:

1. Approve the final ethics awareness survey draft for distribution in January;
2. Set the date of January 11, 2005, at 6:00 p.m. in Council Chambers for a Special Council meeting for the final ethics training session; and
3. Direct that a date be set for a second ethics training make-up session in early January for Commissioners.

XIX. ORDINANCES

10. Introduce Ordinance No. 267 Repealing Section 1-310-9.10 of Title 1 of the Milpitas Municipal Code and Adding a New Chapter 330 to Title 1 Establishing a Lobbying Ordinance (Staff contact: Tambri Heyden, 586-3280 and John Bakker, 586-3040)

Background: Pursuant to the Council's approval of the ethics project implementation plan and amended contract with Dr. Shanks, the lobbyist registry ordinance included in the Council's agenda materials has been prepared and reviewed by the Ethics Steering Committee. This proposed ordinance goes beyond the interim lobbyist regulations that are part of the Open Government Ordinance. Thus, the new ordinance would repeal the existing regulations. The purpose of the lobbying ordinance is to maintain citizens' right to petition government; to guarantee that the public's interest is being served; to provide an environment that requires decision-makers' independent judgment; to disclose prior relationships and current contacts between city officials, lobbyists, political consultants, fundraisers and lobbyists' clients; and to set standards to hold city officials accountable to the City's Ethics Code. To achieve these goals, the lobbying ordinance:

1. defines and distinguishes between lobbyists and political consultants;
2. requires that lobbyists register with the City Clerk and re-register and keep their registry information up-to-date;
3. provides a procedure for barring a person who does not register;
4. requires quarterly disclosure of all lobbying activities;
5. establishes penalties for violating the ordinance; and
6. provides for the ability to assess registration fees.

Recommendation: The Ethics Steering Committee recommends the Council:

1. Waive reading beyond the title; and
2. Introduce Ordinance No. 267.

XX. RESOLUTIONS

*** 11. Adopt Resolution Granting Initial Acceptance: Barber Bellew Traffic Signal Installation, Project No. 4212 (Staff Contact: Jeff Leung, 586-3326)**

Background: The public improvements consisting of a traffic signal installation at Barber Lane, Barber Court and Bellew Drive with diagonal parking and signal coordination has been

completed. The work is now ready for initial acceptance. The contractor's faithful performance bond may be reduced to \$21,488.70, 10% of the contract amount.

Recommendation: Adopt resolution granting initial acceptance subject to a one-year warranty period and reduction of the faithful performance bond to \$21,488.70.

- * **12. Adopt Resolution Granting Final Acceptance: Off-Leash Dog Park (Project No. 5072) (Staff Contact: Doug DeVries, 586-3313)**

Background: This project was initially accepted on November 4, 2004, and has passed the one-year warranty period. A final inspection has been made and the improvements, which include installation of sod, hydroseed, benches, trash receptacles, drinking fountain, kiosk, arbor and landscape/irrigation for the dog park at Ed Levin County Park, are satisfactory. The Council may grant final acceptance and the contractor's bond may be released.

Recommendation: Adopt resolution granting final acceptance and release of the Contractors bond.

XXI. BIDS AND CONTRACTS

- * **13. Approve a Contract Change Order: Diversified Fire Products; Civic Center (Project No. 8026) (Staff Contact: Greg Armendariz, 586-3401)**

Background: The City Council awarded this project to Diversified Fire Products on July 6, 2004, and construction is underway. The completed project will enhance emergency communication capability between the City Hall Building and Dispatch, and the anticipated completion date is February 2005.

Additional enhancements to the emergency communication system has been identified. Staff recommends that additional work consisting of re-programming the control module, connection of additional fire safety devices and obtaining electronic record drawings be included in the project. Staff has negotiated a fee not to exceed \$8,415.60 with the Contractor for this additional work, and the approval of a contract change order is requested. Sufficient funds are available in the project budget for this change order.

Recommendation: Approve the Contract Change Order for Diversified Fire Products in the amount of \$8,415.60.

- * **14. Approve Purchase Order to Raines, Melton & Carella for Additional Sewer Modeling (Staff Contact: Darryl Wong, 586-3345)**

Background: Staff is recommending issuing a purchase order to Raines, Melton and Carella (RMC) for sewer modeling. RMC is the firm that developed and updated the sewer hydraulic model to include the impact of extra wet weather flows on capacity. RMC has provided sewer evaluations due to proposed new developments. Additional modeling to provide a cost-effective analysis of possible major sewer line relocation is needed. Comparison of options on potential overall impacts to the Capital Improvement Program costs will be determined. The proposed fee for these services is \$23,240 and funds are available from the Minor Sewer (Project No. 6057) project budget.

Recommendation: Approve a purchase order to Raines, Melton & Carella for additional hydraulic modeling for an amount not to exceed \$23,240.

- * **15. Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals: Coyote Creek Trail, Reach 1, (Project No. 4206) Nolte Associates, (Staff Contact: Greg Armendariz, 586-3401)**

Background: Plans and specifications for the subject project have been completed in accordance with the approved five-year Capital Improvement Program (CIP). The project provides for construction of a pedestrian and bicycle trail along the top of the east bank of Coyote Creek, including installation of pathway surfacing from south of Ranch Drive to North McCarthy Boulevard at the north city limits, as well as trail access points and amenities. The trail is located within the creek corridor owned by the Santa Clara Valley Water District. This portion of Coyote Creek Trail serves as part of the San Francisco Bay Trail alignment.

Construction of this project is funded in part by a Bay Trail grant, a Transportation Fund for Clean Air grant, and a Santa Clara Valley Water District grant. The Bay Trail grant requires substantial completion of construction by June 2005. It is anticipated that a budget appropriation in the order of \$300,000 will be required to award this project for construction. Funds are available in the Park fund, if necessary. A budget appropriation will be proposed once bids are received and a contract award is presented to Council. Staff is also continuing to investigate outside funding sources that may be available. A copy of the project plan title sheet is included in the Council's agenda packets. Complete plans and specifications are available for review in the office of the City Engineer.

Recommendation:

1. Approve plans and specifications.
2. Authorize advertising for bid proposals.

*** 16. Award Underground Storage Tank Inspection, Reporting And Training Services To Monette Consulting Services (Staff Contact: Greg Armendariz, 586-3401)**

Background: On January 1, 2005, the owners and operators of underground storage tanks must comply with a new Underground Storage Tank State Regulation that requires the owner/operator to have a State Certified Designated Operator and to maintain and disclose monthly underground storage tanks inspection and testing records. The City currently owns several underground storage tanks that fall under this category.

Staff has solicited several quotes from consultants to perform the required monthly testing and reporting, the lowest being Monette Consulting Services in the amount of \$3,324.00 for one year of services. Staff proposes to award the underground storage tank inspection and reporting services to Monette Consulting Services. A budget transfer of \$3,324 from the contingency reserve is proposed.

Recommendation: Award the underground storage tank inspection and reporting services to Monette Consulting Services in the amount of \$3,324.00 and approve the transfer.

*** 17. Award Contract: California Textiles, Inc.: Mechanical Sun Screen; Civic Center (Project No. 8026) (Staff Contact: Jorge Bermudez, 586-3404)**

Background: During the winter months (October thru March) the first floor lobby and the public counter at the City Hall Building experience a discomforting sun glare on the southwesterly part of the lobby during sunset (after 3:00 pm).

Staff considered several options including moveable partitions, to be placed on the south part of the waiting area in front of the public counter. A prototype model built shows that a large portion of the lobby near the counter would not receive relief from the sun without compromising the public entrance from the south doors. Staff proposes to install automatic motorized shades similar to those installed on the Committee Meeting room. These shades would be installed only along the front windows and would be completely concealed above the ceilings when not in use. Staff has solicited bids from authorized dealers in the area, and two bids were received. The lowest responsive bid is for \$12,510.00 from California Textiles, Inc, which is considered reasonable.

Recommendation: Award contract for installation of mechanical sunscreen to California Textiles Inc. in the amount of \$12,510.00.

- * 18. **Award Contract: Ireland Interiors; Building Improvements Project, CP-8135 (Staff Contact: Greg Armendariz, 586-3401)**

Background: The community room located at the police department is frequently used for community meetings and other community gatherings. Due to the high vaulted ceilings, high walls, and no acoustical paneling, sound amplifies echoes and results in overall poor acoustical performance during meetings, training sessions and other uses.

Staff has solicited solutions from consultants to attenuate the resonance of the walls, and recommends awarding the installation of sound insulation in the form of baffles and wall insulation to Ireland Interiors in an amount not to exceed of \$9,800.00. Ireland Interiors is a qualified contractor that has successfully worked with the City in the past. Sufficient funds are available in the project budget.

Recommendation: Award the installation of sound insulation baffles and wall insulation to Ireland Interiors in an amount not to exceed \$9,800.00.

- * 19. **Approve Agreement Amendment: 4 LEAF Inc., Silicon Valley Intelligent Transportation System (ITS) (Project No. 4219) (Staff Contact Mike McNeely, 586-3301)**

Background: 4 LEAF Inc. is currently providing Construction Management and Inspection of the Silicon Valley Intelligent Transportation System (ITS) project. This multi-jurisdictional project will extend fiber optic communication lines between Traffic Management Centers in Fremont, Milpitas and Caltrans District Office in Oakland. Closed Circuit Television cameras are also being installed along the North – South corridors between Milpitas and Fremont to monitor traffic congestion. All costs for this project are reimbursed by a State and Federal grant fund.

Additional services are needed to complete the construction closeout phase and prepare documentation for potential claims. It is expected that these additional costs incurred by the City will be collected from the contractor in the form of liquidated damages. An agreement amendment with 4 LEAF Inc. is proposed for these additional services with a not to exceed amount of \$20,000, which is considered reasonable for the scope of work. There are sufficient funds in the project budget to cover this additional expense.

Recommendation: Authorize the City Manager to execute the agreement amendment with 4 LEAF Inc., in the amount of \$20,000, subject to approval as to form by the City Attorney.

- * 20. **Approve Contract Change Order: Main Sewage Pump Station Demolition (Project No. 6079) (Staff Contact: Steve Erickson, 586-3414)**

Background: This project was awarded for construction by the City Council on September 21, 2004 to ICONCO Inc. This project involves demolition and removal of abandoned sewage treatment facilities at the City's Main Sewage Pump Station site at 1425 North McCarthy Boulevard. The work includes the demolition and removal of the abandoned chlorine contact basin, sludge basin, chlorine building, operations building, and inactive utilities and appurtenances.

An abandoned digester tank structure was not included in the demolition contract because funding was not assured and it was scheduled to be included in a later construction phase. The current demolition work is now approximately 50% complete, no additional unforeseen work has been identified, and the contractor has successfully proven their ability to complete this specialty work very efficiently.

Staff has required the contractor to submit a quote to demolish the digester structure, including the removal, testing, and disposal of water and sludge remaining in the structure. The quote for this phase of the work is based on time and materials and is not to exceed \$113,496.77, which is considered reasonable for the work involved and there are now sufficient funds in the project for this change order.

Recommendation: Authorize staff to approve the contract change order in the amount not to exceed \$113,496.77 to ICONCO Inc.

XXII. CLAIMS AND DEMANDS

- * 21. **Approve Payment to Santa Clara County for November 2, 2004, Election Costs (Staff Contact: Gail Blalock, 586-3001)**

Background: Santa Clara County has submitted an invoice in the amount of \$67,128 for the services of the Registrar of Voters for the November 2, 2004, General Municipal election. The election budget approved in May during the budget hearings for fiscal year 2004-2005 did not include the Hillside Ordinance Measure T that was subsequently added to the November ballot by the Council on July 29, 2004. Therefore, a budget appropriation of \$10,000 is necessary to pay this invoice. It should be noted that the cost to the City will be reduced by \$8,006, the cost of printing and mailing the candidates' statements in the sample ballot, which was the responsibility of the candidates.

Recommendation: Approve a budget appropriation in the amount of \$10,000 from the contingency reserve and authorize payment to Santa Clara County in the amount of \$67,128.

- * 22. **Approve Premium Payment for Excess Workers' Compensation Insurance (Staff Contact: Cherie Rosenquist, 586-3082)**

Background: The State of California requires public agencies who have self-funded workers' compensation programs to carry excess workers' compensation insurance. Historically, following the City's yearly financial audit our excess insurance carrier calculates a final premium payment based on the City's year end payroll figures. The final adjusted premium calculation for fiscal year 2003-04 is \$7,848.90. Sufficient funds are available in the department's budget.

Recommendation: Approve the year-end final premium for Workers' Compensation Excess Insurance with Ace American Insurance for fiscal year 2003-04 in the amount of \$7,848.90 through Brown and Brown Insurance brokers.

XXIII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, JANUARY 4, 2005, AT 7:00 P.M.**

City Council

Jose Esteves, Mayor
Armando Gomez, Vice Mayor
Bob Livengood, Councilmember
Althea Polanski, Councilmember
Debbie Giordano, Councilmember



MILPITAS CITY COUNCIL
MILPITAS REDEVELOPMENT AGENCY

NOTICE OF SPECIAL MEETING

December 14, 2004
7:00 p.m.
Council Chambers, City Hall
455 E. Calaveras Blvd

NOTICE IS HEREBY GIVEN that, pursuant to Government Code section 54956, the Mayor and City Council have called a Special Joint Meeting of the Milpitas City Council and the Milpitas Redevelopment Agency to be held at 7:00 p.m. on Tuesday, the 14th day of December, 2004, in the Council Chambers, 455 E. Calaveras Blvd, Milpitas, California, for the following purpose:

AGENDA

- I. ROLL CALL & PLEDGE OF ALLEGIANCE**
- II. CITIZENS FORUM**
Please limit remarks to two minutes.
- III. APPROVAL OF AGENDA**
- IV. PUBLIC HEARING: APPROVE THE ELMWOOD RESIDENTIAL DEVELOPMENT PROJECT AND AUTHORIZE THE REDEVELOPMENT AGENCY EXECUTIVE DIRECTOR TO ENTER INTO AN AGREEMENT WITH KB HOME SOUTH BAY, INC., FOR THE PURPOSE OF SALE AND DEVELOPMENT OF THE ELMWOOD SURPLUS PROPERTIES**
- V. ADJOURNMENT**

Gail Blalock, City Clerk, 408/586-3001

Dated: December 8, 2004

City of Milpitas, 455 E. Calaveras Blvd, Milpitas, CA 95035, Phone: 408/586-3000
Individuals requiring accommodations for this meeting should notify the City Clerk 48 hours prior to the meeting
408/586-3001, TDD 408/586-3013.
Hearing assistance devices are available for use in the Council Chambers

CITY OF MILPITAS
Summary of Contents
Milpitas City Council/Redevelopment Agency
December 14, 2004
7:00 p.m. Public Business
455 E. Calaveras Boulevard

I. ROLL CALL & PLEDGE OF ALLEGIANCE

II. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

III. APPROVAL OF AGENDA

IV. PUBLIC HEARING

- 1. APPROVE THE ELMWOOD RESIDENTIAL DEVELOPMENT PROJECT AND AUTHORIZE THE REDEVELOPMENT AGENCY EXECUTIVE DIRECTOR TO ENTER INTO AN AGREEMENT WITH KB HOME SOUTH BAY INC. FOR THE PURPOSE OF SALE AND DEVELOPMENT OF THE ELMWOOD SURPLUS PROPERTIES (STAFF CONTACTS: BLAIR KING, 586-3260 AND TROY FUJIMOTO, 586-3287)**

V. ADJOURNMENT

NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, DECEMBER 21, 2004, AT 7:00 P.M.

CITY OF MILPITAS
Agenda Reports
Milpitas City Council Meeting
December 14, 2004
7:00 p.m. Public Business
455 E. Calaveras Boulevard

XIV. PUBLIC HEARINGS

- 1. Approve the Elmwood Residential Development Project and authorize the Redevelopment Agency Executive Director to enter into an agreement with KB Home South Bay Inc. for the purpose of Sale and Development of the Elmwood Surplus Properties. (Staff Contacts: Blair King, 586-3260 and Troy Fujimoto, 586-3287)**

Background: In June of 2003, within the context of the Eighth Amendment to the Redevelopment Plan for Redevelopment Project Area No. 1, the Redevelopment Agency and City Council entered into a series of agreements with the County of Santa Clara for the purchase and development of surplus County property at Elmwood. The Redevelopment Agency and the County of Santa Clara agreed to the purchase and sale of 35 acres of County property by the Redevelopment Agency. The Agency agreed to the assignment from the County of an Exclusive Negotiating Rights Agreement with KB Home Southbay, Inc. to develop 34 acres according to the terms and conditions negotiated between KB Homes and the County. Subsequent to the June Agreements, the County, KB Homes, the Redevelopment Agency, and the City agreed on the means and methods to provide for affordable housing on and off-site related to the KB development. As a companion to the development by KB Homes, the County had envisioned, and has begun, the development of 23.5 acres fronting Interstate 880 for three to four auto dealerships.

In brief, the Elmwood Agreements provided for the following key elements:

- The Purchase of 35 acres of Elmwood Property for \$135 million paid out over 20-years, plus the payment of the developer-negotiated value of \$57,750,000, and additional future payments based upon valuation and sales activity. (Parcels C & D)
- The permanent elimination of the expansion of Elmwood Correctional Facility.
- The acquisition of the 1.06-acre Cracolice Site. (Parcel E)
- A \$20,000,000 subsidy by the Redevelopment Agency for infrastructure development and mitigation related to the residential development.
- The development of approximately 700 housing units (currently, the developer proposes to construct 683 residential units: 315 condominiums, 203 flats, and 165 single-family homes. This does not include the 104 affordable senior housing units.)
- Development of 6.5 acres of public parks of which 3.1 acres could be developed on the San Francisco Public Utility Commission right-of-way. (Currently, the developer proposes to develop 7 acres of public park and 10 acres of private recreational space.)
- Development of 110 deed-restricted moderate income affordable units on site and a contribution of \$5,000,000 by KB Homes for the development of at least 98 deed-restricted very low and low income affordable senior units off-site. (Currently, 104 Senior Affordable units for extremely low and very low-income seniors are planned to be developed.)
- The development by the County of Santa Clara of 23.5 acres fronting Interstate 880 for auto dealerships. (Parcel B)

Subsequent to the adoption of the above agreements, the developer, the County and city staff have worked diligently and earnestly to implement the provisions of the previously adopted agreements. As a whole, the business transaction agreed to in June has remained unchanged, however, some of the implementation terms have been adjusted. For example, the number of affordable housing units remains in proportion to the number of market rate units originally envisioned, although the exact number may have changed. If approved, the following applications will act as the consummation of the terms and conditions of the previous agreements.

EIA NO. EA2003-7: Environmental impact report for the project.

GENERAL AND SPECIFIC PLAN AMENDMENT (GP2003-1): Amendment to the General Plan and Midtown Specific Plan land use designations of Parcel E and portions of Parcels C & D.

ZONING MAP AMENDMENT (ZC2003-2): Rezone Parcel E and portions of Parcels C & D.

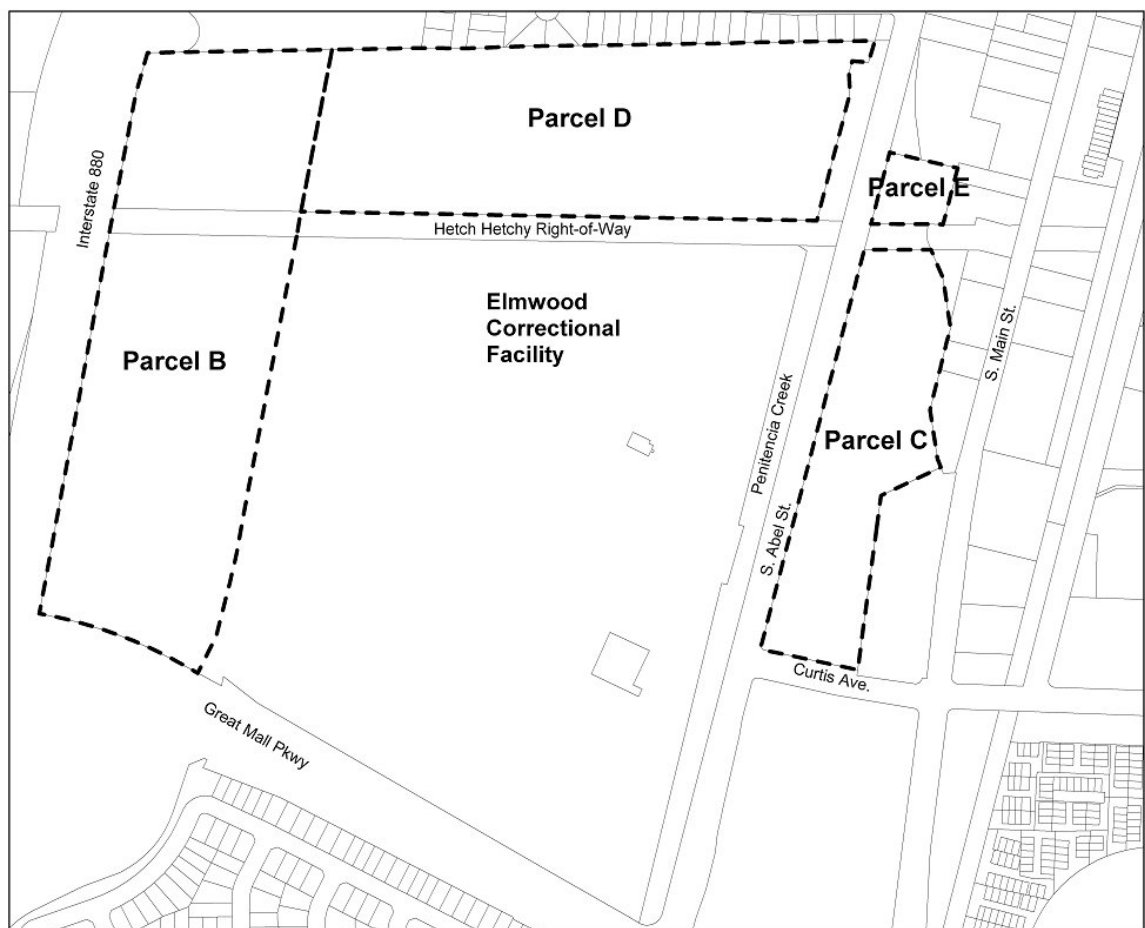
MAJOR VESTING TENTATIVE MAP NO. MA2003-4: Subdivision of land for residential, parks, and commercial purposes.

PLANNED UNIT DEVELOPMENT NO. PD2003-1: Development of 165 small lot single-family and 203 town home units on Parcel D.

SITE AND ARCHITECTURE REVIEW (SZ2003-6): Development of 315 condominium units on Parcel C.

USE PERMIT NO. UP2003-26: Deviation of development standards including usable open space per unit, number of floors, and setbacks for the condominium units on Parcel C.

Parcel Labels



Pursuant to California Community Redevelopment law, a redevelopment agency may sell property without public bidding after a public hearing, notice of which is published for not less than once per week for two weeks. This noticing has been accomplished. Additionally, the Redevelopment Agency must hold a hearing on the "Fair Reuse Report" prior to considering the property's disposition. The Fair Reuse Report must include the cost of the agreement to the Agency, (including the Agency's acquisition costs, costs of improvements to be provided by the Agency, and expected interest to be paid on loans or bonds), the value of the interest to be conveyed, the sales price to be paid, an explanation of any difference between the sale price and fair market highest and best use value, and an explanation of how the sale will assist the elimination of blight. In order to prepare the Fair Reuse Report the Agency retained the services

of the expert firm of Keyser Marston who will be present at the hearing. A copy of the Fair Reuse Report is attached.

The instrument to effectuate the sale and development of the property, the Disposition and Development Agreement (DDA), to KB is attached. It contains the business agreements arrived at between the County and KB as well as reinforcing various conditions of approval. According to the terms of the Agreement, the property will close in forty-five days if no appeals are filed. However, the closing of parcel C, the east side of Abel, can be extended for six months after the closing of the west side of Abel. The agreement envisions that construction will commence early spring 2005 and requires that two of the access roads, the road from Great Mall Parkway north and the entry road parallel to the Hetch-Hetchy right-of-way, will be substantially completed by November 20, 2005.

The amount of off-site improvements envisioned to make this project an outstanding addition to the community are more numerous than anticipated and the cost more than originally planned. More improvements have been added, for example the Abbott Street connection, and costs have increased since the agreement was first negotiated in late 2002 and early 2003. In order to maintain the economics for the project for both the County and the developer, it is proposed that an additional \$6 million be provided for off-site infrastructure and mitigation costs. This amount of money is available in reserved undesignated redevelopment funds.

The Planning Commission reviewed the project at its November 17th meeting and recommended the Council certify the EIR and approve all the components of the Elmwood Residential Project with modifications. The Commission recommended that the public park proposed along the west side of Abel Street on Parcel D be centrally located on the parcel and doubled in size and supported the Parks, Recreation, and Cultural Resources Commission's (PRCRC) recommendation that the new Elms Parks and the adjacent condominium building be re-designed around seven of the O'Toole elms trees.

The PRCRC reviewed the amenities for the public park areas at their October and November meetings and recommended a public restroom be constructed in the public park proposed along the west side of Abel Street on Parcel D, that more shade structures be provided at the picnic areas, and that seven of the O'Toole elm trees be preserved. In addition, the PRCRC recommended that seeds from the elms be propagated to replace the trees that are removed and that the wood from the removed trees be used to make commemorative plaques.

The Draft EIR was prepared and circulated for public review between October 1st and November 14th. Nine comment letters were received, in addition to the oral comments received during the EIR public meeting. Responses to all the comments received during the review period have been prepared and included in the Final EIR. The Final EIR was circulated for public review on December 3rd. The Draft and Final EIR combined comprise the project EIR. The project EIR thoroughly analyzed the potential for the project to cause or contribute to significant environmental effects.

Recommendation:

1. Close the Joint Public Hearing.
2. Adopt the Resolution certifying the final Environmental Impact Report, making CEQA findings, adopting the Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Plan.
3. Adopt the Resolution approving the General Plan and Midtown Specific Plan Amendments.
4. Introduce Ordinance 38.765 (ZC2003-2), relating to the Zoning Ordinance Map changes, waiving reading beyond title.
5. Approve the Elmwood Vesting Major Tentative Map (MA2003-4), Planned Unit Development No. PD2003-1, S-Zone (SZ2003-6) and Use Permit No. UP2003-26, based on the findings and special conditions contained in the Council's agenda packet, dated December 8, 2004.
6. Adopt Resolution of the City Council of the City of Milpitas authorizing the sale of real property to KB Home South Bay, Inc., approving the Reuse Report required by Health and Safety Code Section 33433, and adopting Findings in connection with such sale.
7. Adopt Resolution of the Redevelopment Agency of the City of Milpitas approving the Reuse Report required by Health and Safety Code Section 33433, authorizing the execution of a

Disposition and Development Agreement and the sale of real property to KB Home South Bay, Inc., and adopting Findings in connection with such sale.

IV

ATTACHMENT FOR

**Item # IV APPROVE THE ELMWOOD RESIDENTIAL
DEVELOPMENT PROJECT AND AUTHORIZE THE
REDEVELOPMENT AGENCY EXECUTIVE DIRECTOR TO
ENTER INTO AN AGREEMENT WITH KB HOME SOUTH BAY
INC. FOR THE PURPOSE OF SALE AND DEVELOPMENT OF
THE ELMWOOD SURPLUS PROPERTIES**
IS AVAILABLE AT THE CITY HALL
INFORMATION DESK

City Council

Jose Esteves, Mayor

Bob Livengood, Councilmember

Althea Polanski, Councilmember

Armando Gomez, Councilmember

Debbie Giordano, Councilmember



CITY OF MILPITAS

MILPITAS CITY COUNCIL MEETING

December 7, 2004

7:00 p.m.

Council Chambers

455 E. Calaveras Boulevard

SUPPLEMENTAL AGENDA

NOTICE IS HEREBY GIVEN that the December 7, 2004, City Council Agenda is amended by the addition of the following item:

XIIIA. ELECTION OF A VICE MAYOR: MAYOR ESTEVES

BACKGROUND: The adopted City Council Handbook provides that the Vice Mayor be elected from those on the Council during the first meeting at which the Mayor and returning or incoming Councilmembers commence their terms. Mayor Esteves recommends that the Vice Mayor be selected based on seniority of votes; the Councilmember who received the highest number of votes in their most recent election would be elected Vice Mayor. In accordance with that procedure, Mayor Esteves asked Councilmember Livengood if he would accept the position of Vice Mayor, and Councilmember Livengood declined. Mayor Esteves is recommending the election of Councilmember Polanski as Vice Mayor since she received the highest number of votes in the November 5, 2002, Council election.

RECOMMENDATION: Approve the election of Councilmember Polanski as Vice Mayor.

Printed and Posted December 3, 2004

Gail Blalock, City Clerk

City Council

Jose Esteves, Mayor

Patricia Dixon, Vice Mayor

Bob Livengood, Councilmember

Althea Polanski, Councilmember

Armando Gomez Jr., Councilmember



MILPITAS CITY COUNCIL

NOTICE OF SPECIAL MEETING & AGENDA

December 7, 2004

6:30 p.m.

Council Chambers, City Hall

455 E. Calaveras Blvd

NOTICE IS HEREBY GIVEN that, pursuant to Government Code section 54956, the City Council has called a Special Meeting of the Milpitas City Council to be held at 6:30 p.m. on Tuesday, the 7th day of December, 2004, in the Council Chambers, 455 E. Calaveras Blvd, Milpitas, California. The meeting will be called to order in the Council Chambers and the Council will adjourn to the Council Executive Conference Room at City Hall for the purpose of holding a Closed Session.

1. CALL TO ORDER

2. CITIZENS FORUM

Members of the audience are invited to address the City Council on any subject not on the agenda.

3. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Pursuant to Government Code Section 54956.9(a))

Milpitas v. RRM et al. Alameda County Superior Court No. RG 03088899

4. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Pursuant to Government Code Section 54956.9(a))

Peterson WCAB Claim Nos. SJ125152, SJ126560, SJ126559 & SJ126553

5. CLOSED SESSION ANNOUNCEMENTS

6. ADJOURNMENT

Gail Blalock, City Clerk

408/586-3001

Date: December 1, 2004

City Council

Jose Esteves, Mayor

Patricia Dixon, Vice Mayor

Bob Livengood, Councilmember

Althea Polanski, Councilmember

Armando Gomez, Councilmember



MILPITAS CITY COUNCIL

NOTICE OF SPECIAL MEETING

December 7, 2004

7:00 p.m.

Council Chambers, City Hall

455 E. Calaveras Blvd

NOTICE IS HEREBY GIVEN that, pursuant to Government Code section 54956, the Mayor and City Council have called a Special Meeting of the Milpitas City Council to be held at 7:00 p.m. on Tuesday, the 7th day of December, 2004, in the Council Chambers, 455 E. Calaveras Blvd, Milpitas, California, for the following purposes:

1. Approving Council minutes of November 2, 2004, and November 16, 2004;
2. Confirming official canvass of returns for the November 2, 2004, Election;
3. Recognizing outgoing Councilmember; and
4. Swearing in new Councilmembers and Mayor.

Gail Blalock, City Clerk
408/586-3001

Dated: December 3, 2004

City of Milpitas, 455 E. Calaveras Blvd, Milpitas, CA 95035, Phone: 408/586-3000
Individuals requiring accommodations for this meeting should notify the City Clerk 48 hours prior to the meeting
408/586-3001, TDD 408/586-3013.
Hearing assistance devices are available for use in the Council Chambers



CITY OF MILPITAS
Preliminary Agenda for December 7, 2004
City Council Meeting
Council Chambers
455 E. Calaveras Boulevard
Milpitas, CA 95035
7:00 p.m.

CALL TO ORDER & ROLL CALL
by Mayor Esteves

PRESENTATION OF COLORS
Members of Girl Scout Troop No. 1188

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES
November 2, 2004, Special Meeting and November 16, 2004

ADOPTION OF RESOLUTION
Confirming Official Canvass of Returns – November 2, 2004, Election

RECOGNITION OF OUTGOING VICE MAYOR PATRICIA DIXON
Comments by Vice Mayor Patricia Dixon

SWEARING IN OF COUNCILMEMBERS AND MAYOR
Councilmember Debbie Giordano
Councilmember Bob Livengood
Mayor Jose Esteves

COMMENTS BY COUNCILMEMBERS AND MAYOR
Councilmember Debbie Giordano
Councilmember Bob Livengood
Mayor Jose Esteves

RECESS

The Council will reconvene after the recess for the regular meeting.

CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
December 7, 2004
7:00 p.m. (Following Swearing In Ceremony)
455 E. Calaveras Boulevard

- I. ROLL CALL**
- II. CLOSED SESSION (Held Earlier)**
- III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present**
- IV. PLEDGE OF ALLEGIANCE (Held Earlier)**
- V. APPROVAL OF MINUTES: (None)**
- VI. SCHEDULE OF MEETINGS**
- VII. PRESENTATIONS (None)**
- VIII. CITIZENS FORUM**

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

- IX. ANNOUNCEMENTS**
- X. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- XI. MOMENTS OF REFLECTION**
- XII. APPROVAL OF AGENDA**
- XIII. CONSENT CALENDAR (Items with Asterisks)**
- XIV. PUBLIC HEARINGS (None)**
- XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**
 - RA1. Call to Order by the Mayor**
 - RA2. Roll Call**
 - RA3. Approval of Minutes: November 16, 2004**
 - RA4. Approval of Agenda and Consent Calendar (items with asterisks)**
 - *RA5. Acceptance of Milpitas Redevelopment Agency Fiscal Year 2003-2004 Annual Report (Staff Contact: Emma Karlen, 586-3145)**

XVI. REPORTS OF OFFICERS AND BOARDS

City Council

- * 1. Approve Appointment to the VTA Board for December 7 to December 21, 2004: Mayor Esteves (Staff Contact: Cindy Maxwell, 586-3282)
- * 2. Approve Appointments to the Senior Advisory Commission and Reappointment to the Recycling and Source Reduction Commission: Mayor Esteves
- 3. Review Policies and Procedures for Council Appointments to Regional Boards and Agencies, City Commission Liaisons, and Council Sub-Committees and Review Policy/Ordinance Setting the Process for Appointments to City Commissions and/or Task Forces: Councilmember Giordano

XVII. UNFINISHED BUSINESS

- * 4. Accept Final Environmental Impact Report (FEIS) for BART Extension to Milpitas, San Jose and Santa Clara (Staff contact: Mike McNeely, 586-3301)
- * 5. Odor Control Comprehensive Action Plan update (Staff Contact: Darryl Wong, 586-3345)

XVIII. NEW BUSINESS

- * 6. 2005 Special Events Calendar & 4th of July Events Update (Staff Contact: Bonnie Greiner, 586-3227)
- * 7. Approve Filling Vacant Position: Vehicle Maintenance Supervisor (Staff Contact: Cherie Rosenquist, 586-3082/Blair King 586-3060)

XIX. ORDINANCES

- * 8. Adopt Ordinance No. 48.16 Amending Chapter 200 (Solid Waste Management), Title V of the City Of Milpitas Municipal Code (Staff Contact: Darryl Wong 586-3345)
- * 9. Adopt Ordinance No. 38.766 (ZT2004-4) Amending Title XI, Chapter 10 (Planning, Zoning and Annexation) of the Municipal Code to Add Tutoring Centers in the Highway Services District (Staff Contact: Staci Pereira, 586-3278)

XX. RESOLUTIONS

- * 10. Adopt Resolution Authorizing the filing of an application to the State of California Integrated Waste Management Board, Senate Bill 1346 Rubberized Asphalt Concrete Grant Program: 2004 Street Resurfacing, Project No. 4223, (Staff Contact: Doug De Vries, 586-3313)
- * 11. Adopt a Resolution Declaring Weeds on Certain Properties to be a Public Nuisance and Setting a Public Hearing for January 4, 2005, to Hear Objections (Staff Contact: Patti Joki, 586-3370)
- * 12. Adopt Resolution Granting Final Acceptance (Bond Blacktop, Inc.): 2003 Slurry Seal Project, Project No. 4182, (Staff Contact: Doug De Vries 586-3313)

- * 13. **Adopt Resolution Granting Final Acceptance (Interstate Grading and Paving, Inc.): 2003 Street Resurfacing Project, Project No. 4182, (Staff Contact: Doug DeVries, 586-3313)**
- * 14. **Adopt Resolution Granting Final Acceptance: SBWR Infill (M-4) Town Center Segment, Project No. 6093 (Staff Contact: Doug De Vries, 586-3219)**
- * 15. **Adopt a Resolution to Reclassify a Vehicle Maintenance Worker II (Staff: Cherie Rosenquist, 586-3082/Blair King, 586-3060)**

XXI. BIDS AND CONTRACTS

- * 16. **Authorize the City Manager to Execute Agreement with Nicolay Consulting Group for Actuarial Valuation Service on Retiree Medical Benefits (Staff Contact: Emma Karlen, 586-3145)**
- * 17. **Authorize City Manager to Execute Agreement Between the City of Milpitas and the County of Santa Clara for Acceptance of State Homeland Security Grant Funds (Staff Contact: Americo Silvi, 586-2810)**
- * 18. **Approve Agreement Amendment with Harris & Associates for Contract Engineering Services (Staff Contact: Mehdi Khaila, 586-3327)**
- * 19. **Approve Agreement Modifying Easement with PG&E: Telecommunication Antennas on PG&E Tower: Vasona Street: (Staff Contact: Mehdi Khaila, 586-3328)**
- * 20. **Authorize the City Manager to Execute the Agreement: Design Engineers Group, Singley Area Reconstruction (Project No. 4200) (Staff Contact: Doug De Vries, 586-3313)**
- * 21. **Award the Bid for the Purchase of Replacement Public Safety Dispatch Equipment (Staff Contact: Bart Damele, 586-3162)**

XXII. CLAIMS AND DEMANDS

- * 22. **Approve Payment Requests: Miscellaneous Vendors/Contractors (Staff Contact: Bart Damele, 586-3162)**

XXIII. ADJOURNMENT TO 6:00 P.M., TUESDAY, DECEMBER 14, 2004

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, DECEMBER 21, 2004, AT 7:00 P.M.**

**CITY OF MILPITAS
Agenda Reports
Milpitas City Council Meeting
December 7, 2004
7:00 p.m. (Following Swearing In Ceremony)
455 E. Calaveras Boulevard**

XIV. PUBLIC HEARINGS (None)

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor

RA2. Roll Call

RA3. Approval of Minutes: November 16, 2004

RA4. Approval of Agenda and Consent Calendar (items with asterisks)

***RA5. Acceptance of Milpitas Redevelopment Agency Fiscal Year 2003-2004 Annual Report (Staff Contact: Emma Karlen, 586-3145)**

Background: Pursuant to the reporting requirements of the Community Redevelopment Law and the Agency's bylaws, the agency must prepare a report annually to its legislative body within six months of its fiscal year end. Staff has prepared the Fiscal Year 2003-2004 Annual Report to provide the board members of the Agency with an overview of the redevelopment activities and accomplishments for the two project areas. An independent financial audit report was previously accepted by the Agency Board on November 16, 2004.

Recommendation: Note receipt and file the Milpitas Redevelopment Agency Fiscal Year 2003-2004 Annual Report.

RA6. Agency Adjournment to 6:00 p.m., Tuesday, December 14, 2004

XVI. REPORTS OF OFFICERS AND BOARDS

City Council

*** 1. Approve Appointment to the VTA Board for December 7 to December 21, 2004: Mayor Esteves (Staff Contact: Cindy Maxwell, 586-3282)**

Background: Milpitas fills a voting seat on the VTA Board for calendar years 2004 and 2005. The seat represents the cities of Milpitas, Morgan Hill, and Gilroy and is rotated every two years among the three cities. Vice Mayor Dixon filled the position during 2004. The City Council will consider Council appointments to various boards and commissions on December 21. However, the VTA Board will meet on December 9 to review the BART environmental study. If Milpitas does not have an official appointment to the VTA Board that is effective for the December 9 meeting, the designated Alternate, Mayor Dennis Kennedy of Morgan Hill, will fill the seat and vote on the BART project. On December 21, the City Council can approve an appointment to fill the VTA Board seat for the remainder of the term through 2005.

Recommendation: Approve the Mayor's appointment of himself to the VTA Board for the period December 7 to December 21, 2004.

*** 2. Approve Appointments to the Senior Advisory Commission and Reappointment to the Recycling and Source Reduction Commission: Mayor Esteves**

Background: Mayor Esteves is recommending the appointment of Kathryn Manento to the Alternate No. 2 position on the Senior Advisory Commission, for a term expiring December 2005, and moving Barbara Ebright from Alternate No. 2 to Alternate No. 1, with a term expiring December 2006, and moving Joyce Dovlet from Alternate No. 1 to an existing vacancy created by the resignation of Bakshish Sandhu, for a term expiring December 2006.

Mayor Esteves is also recommending the reappointments of Patrick Yung to the Recycling and Source Reduction Advisory Commission for a term expiring October 2007. Copies of all current applications on file are included in the Council's agenda packets.

Recommendation: Approve the Mayor's appointment of Kathryn Manento to the Alternate No. 2 position on the Senior Advisory Commission for a term expiring December 2005, moving Barbara Ebright from Alternate No. 2 to Alternate No. 1, with a term expiring December 2006, moving Joyce Dovlet from Alternate No. 1 to a regular member with a term expiring December 2006, and reappointing Patrick Yung to the Recycling and Source Reduction Advisory Commission for a term expiring October 2007.

3. Review Policies and Procedures for Council Appointments to Regional Boards and Agencies, City Commission Liaisons, and Council Sub-Committees and Review Policy/Ordinance Setting the Process for Appointments to City Commissions and/or Task Forces: Councilmember Giordano

Background: Councilmember Giordano is requesting that the Council review for possible revisions the policies, procedures, and ordinances setting forth the process for Council appointments including, but not limited to, regional boards and agencies, City Commission liaisons, and Council Sub-Committees. Councilmember Giordano is also requesting that the Council review and possibly revise the policy/ordinance that sets the process for appointments to City Commissions and/or task forces.

Recommendation: Review and consider.

XVII. UNFINISHED BUSINESS

*** 4. Accept Final Environmental Impact Report (FEIS) for BART Extension to Milpitas, San Jose and Santa Clara (Staff Contact: Mike McNeely, 586-3301)**

Background: On December 9, 2004, the Santa Clara Valley Transportation Authority (VTA) will be considering approval of the final Environmental Impact Report for the BART Extension. On May 4, 2004, a public hearing was held and the City Council approved the comment letter for the draft document. VTA and Milpitas staff has met on several occasions on the various items and VTA staff has pledged to work out solutions to all of our concerns. Following is a summary of the major issues from the comment letter and VTA responses.

1. Land Use/ Montague Station Design

Comment: The Montague station design should maximize Transit Oriented Development (TOD) opportunities to most effectively use the public's capital investment in the BART extension and to implement the City's Midtown Plan.

VTA Response: VTA and City staff are working together on the design elements outlined by the City. VTA supports the City's desire to maximize TOD opportunities associated with this station location.

2. Dixon Landing Road Options

Comment: Milpitas does not support the aerial option for the Dixon Landing Road alignment. The aerial option results in significant environmental impacts, including

noise, vibration, and aesthetics, to residents and businesses in the area that cannot be mitigated. Further analysis is needed to thoroughly evaluate the two non-aerial options.

VTa Response: On May 26, 2004, the Silicon Valley Rapid Transit Corridor Policy Advisory Board (PAB) recommended the Dixon Landing retained cut option for the BART crossing at Dixon Landing Road. This action was taken to address concerns expressed by the City of Milpitas and local residents regarding the Dixon Landing Alignment Aerial Option. (During design, VTA has also pledged to investigate the other option of depressing Dixon under the railroad and BART).

3. Railroad Issues

Comment: Milpitas recommends that the Union Pacific spur line, located north of Montague Expressway, be abandoned rather than relocated as proposed in the DEIS/EIR. Abandonment of the spur line would significantly reduce project costs, avoid disruption to the public park and private properties, and support future development of surrounding properties.

Milpitas supports relocating the railroad turnaround ("wye") outside Milpitas. The proposed relocation north of Montague Expressway would negatively impact potential existing and future transit oriented development in the area.

VTa Response: Because the need to accommodate the needs of currently active shippers along the wye, it has not been determined that abandoning the wye is viable. The two options for relocating the wye will be carried through the environmental process. The final location of the wye will be determined during preliminary engineering phase of the project. VTA will work with all affected parties to determine the best location for the locomotive wye.

4. Minimum Operating Segment (MOS)

Comment: Significant parking impacts could occur at the Montague/Capitol station should the MOS still be in place past 2015. The DEIS/EIR states there will not be any parking impacts to the Capitol/Montague station in year 2015, because the station will be built to 2025 demand. A detailed year 2025 parking analysis under MOS conditions should be prepared analyzing "worst case" to verify that there will be adequate parking should the Berryessa Station be delayed beyond 2015.

VTa Response: VTA is pursuing the full-build BART Alternative for the year 2025, and will not be considering any 2025 Minimum Operating Segment (MOS) as a final operating alternative. A MOS alternative would be considered as a potential initial operating phase prior to the full-build BART Alternative. All BART facilities would be operational within 3 years thereafter.

5. Visual Quality and Aesthetics

Comment: The aerial option at Dixon Landing Road will have significant and unmitigatable impacts on the aesthetics of the area and on views of Mission Peak and the Diablo Hills. Further analysis of these impacts needs to be provided.

VTa Response: On May 26, 2004, the Silicon Valley Rapid Transit Corridor Policy Advisory Board (PAB) recommended the Dixon Landing retained cut option with BART crossing under Dixon Landing Road. This action was taken to address concerns expressed by the City of Milpitas and local residents regarding the Dixon Landing Alignment Aerial Option.

The FEIS has adequately addressed all of the City's comments on the FEIR. A listing of all the comments and responses is included in the Council agenda packet.

Recommendation: Note Receipt and File.

* **5. Odor Control Comprehensive Action Plan Update (Staff Contact: Darryl Wong, 586-3345)**

Background: Activities at the Water Pollution Control Plant (WPCP) and Browning-Ferris Industries (BFI) landfill on Newby Island have resulted in variable odor complaint levels in November. Sludge is being transferred from the WPCP to BFI where it is mixed with soil and used for buried trash cover material. The transfer operation has been stopped on several occasions by BFI due to increase complaint levels on a real time basis, consistent with the odor action plan provisions. The number of complaints for November 2004 is about 2/3 of the number one year ago.

BAAQMD has reported the following number of complaints logged:

- October 2003: 96
- November 2003: 50
- December 2003: 17
- January 2004: 31
- February 2004: 11
- March 2004: 23
- April 2004: 22
- May 2004: 13
- June 2004: 15
- July 2004: 19
- August 2004: 29
- September 2004: 39
- October 2004: 42
- November 2004: 32

Recommendation: Note receipt and file progress report

XVIII. NEW BUSINESS

* **6. 2005 Special Events Calendar & 4th of July events update (Staff Contact: Bonnie Greiner, 586-3227)**

Background: Included in the Council's Agenda packets is the proposed 2005 Recreation Services Special Events Calendar. Two new events have been added to the Special Events Calendar entitled "New Year... New You," this event will provide participants with resources to live a healthy lifestyle and "A Taste of Milpitas," which will showcase Milpitas' diversity through food and entertainment. This event will alternate years with the "Milpitas Global Village" event that will be held in 2006.

Also included is the 4th of July events update. Due to the success of last year's 4th of July events; staff is proposing a similar schedule in addition to the parade. As indicated in the included memorandum, additional funding will be required in order for Recreation Services to host the Main Street parade, pool party, and Red, White and Boom fireworks show. If approved, an additional \$15,000 will be requested during the 2005/2006 fiscal year budget process for services and supplies. Staff recommends approving the 2005 Special Events Calendar.

Recommendation: Note, receipt and file the 4th of July events update.

* **7. Approve Filling Vacant Position: Vehicle Maintenance Supervisor (Staff Contacts: Cherie Rosenquist, 586-3082/Blair King 586-3060)**

Background: A key supervisory vacancy has been held and filled on an interim basis in the Public Works Vehicle Maintenance Unit. The Assistant City Manager is requesting that this essential position be filled to provide ongoing leadership to the Unit.

Sufficient funds are included in the fiscal year 2004-05 budget to cover salary and benefits.

Recommendation: Approve filling the Vehicle Maintenance Supervisor position.

XIX. ORDINANCES

- * **8. Adopt Ordinance No. 48.16 Amending Chapter 200 (Solid Waste Management), Title V of the City Of Milpitas Municipal Code (Staff Contact: Darryl Wong 586-3345)**

Background: On November 16, 2004, an amendment to ordinance number 48 was introduced to the Council. The amendment includes revisions to the solid waste program. Changes include collection of late fees by Browning-Ferris Industries (BFI) to be consistent with existing late fee provisions, and mandatory push and return services for non-single family customers who repeatedly fail to put bins away after collection.

Recommendation:

1. Waive full reading of the ordinance.
2. Adopt Ordinance 48.16 amending sections 3.30, 3.31, 4.20, 7.20 and 9.91 of Chapter 200, Title V, of the Milpitas Municipal Code relating to solid waste service changes.

- * **9. Adopt Ordinance No. 38.766 (ZT2004-4) Amending Title XI, Chapter 10 (Planning, Zoning and Annexation) of the Municipal Code to Add Tutoring Centers in the Highway Services District (Staff Contact: Staci Pereira, 586-3278)**

Background: Ordinance 38.766 was introduced at the November 16, 2004 City Council meeting. This ordinance involves adding tutoring centers as a conditional use in the Highway Service (HS) district and would provide more opportunity for tutoring centers to locate within the City, which is currently limited to two districts. As a conditional use, staff would review the application and address any concerns with parking and hours of operation that may conflict with other businesses in the area.

No issues or concerns were expressed by the City Council during the introduction of the ordinance and therefore no changes have been made.

Recommendation:

1. Waive full reading of the ordinance.
2. Adopt Ordinance No. 38.766 (Zoning Ordinance Text Amendment No. ZT2004-4).

XX. RESOLUTIONS

- * **10. Adopt Resolution Authorizing the filing of an application to the State of California Integrated Waste Management Board, Senate Bill 1346 Rubberized Asphalt Concrete Grant Program: 2004 Street Resurfacing, Project No. 4223, (Staff Contact: Doug De Vries, 586-3313)**

Background: Staff is working to secure grant funds from the California Integrated Waste Management Board (CIWMB) for using rubberized asphalt concrete for the 2004 Street Resurfacing Project. This project provides pavement improvements for various streets within the City. The amount of grant if awarded is approximately \$18,500. As part of the application process, it is necessary to adopt a Resolution authorizing the filing of an application for the purpose of securing grant funds and to implement and carry out the purposes specified in the grant application.

Recommendation: Adopt Resolution authorizing the filing of an application

- * 11. **Adopt a Resolution Declaring Weeds on Certain Properties to be a Public Nuisance and Setting a Public Hearing for January 4, 2005, to Hear Objections (Staff Contact: Patti Joki, 586-3370)**

Background: The County Fire Marshal's office has notified the City that the County is commencing its Weed Abatement Program for the forthcoming season and has requested a resolution declaring weeds to be a public nuisance and scheduling a public hearing to hear objections to the proposed destruction or removal of weeds. A resolution of this nature is adopted by the Council each year declaring weeds on specific properties to be a public nuisance and giving property owners an opportunity to appear before the Council. The public hearing will be scheduled for January 4, 2005.

Recommendation: Adopt a resolution declaring weeds on specific properties to be a public nuisance and scheduling a public hearing for January 4, 2005.

- * 12. **Adopt Resolution Granting Final Acceptance (Bond Blacktop, Inc.): 2003 Slurry Seal Project, Project No. 4182, (Staff Contact: Doug De Vries 586-3313)**

Background: This project provided slurry seal treatment to several streets, and was initially accepted by City Council on November 18, 2003. The one-year project warranty period has passed. Staff conducted a final project inspection and has determined the work to be satisfactory. Therefore, the Council may grant final acceptance and the contractor's bond may be released.

Recommendation: Adopt resolution granting final acceptance and release of the Contractors bond.

- * 13. **Adopt Resolution Granting Final Acceptance (Interstate Grading and Paving, Inc.): 2003 Street Resurfacing Project, Project No. 4182, (Staff Contact: Doug DeVries, 586-3313)**

Background: This project provided reconstruction of Adams, Braly, Carl, Ellis Avenues and Fanyon Street and patching on Lynn Avenue. The project was initially accepted by City Council on November 4, 2003. The one-year project warranty period has passed. Staff conducted a final project inspection and has determined the work to be satisfactory. Therefore, the Council may grant final acceptance and the contractor's bond may be released.

Recommendation: Adopt resolution granting final acceptance and release of the Contractors bond.

- * 14. **Adopt Resolution Granting Final Acceptance: SBWR Infill (M-4) Town Center Segment, Project No. 6093 (Staff Contact: Doug De Vries, 586-3219)**

Background: This project provided the Town Center Segment of the SBWR Infill Project, and was initially accepted by City Council on December 2, 2003. The one-year project warranty period has passed. Staff conducted a final project inspection and has determined the work to be satisfactory. Therefore, the Council may grant final acceptance and the contractor's bond may be released.

Recommendation: Adopt resolution granting final acceptance and release of the Contractors bond.

- * 15. **Adopt a Resolution to Reclassify a Vehicle Maintenance Worker II (Staff: Cherie Rosenquist, 586-3082/Blair King, 586-3060)**

Background: Periodically employee classifications are studied to review proper classification placement due to a change of assignment(s), organizational structure, internal alignment and/or other related changes or conditions.

At the request of the Assistant City Manager, a reclassification study on Mr. Eric Weisler, Vehicle Maintenance Worker II, was finalized by the Human Resources Department. The study included a review of assignments, job specifications and an outside survey to compare job tasks and salary to that of other agencies. The analysis revealed significant replication of duties between incumbent's duties and those of the higher classification, Vehicle Maintenance Worker III. The incumbent currently performs all of the assigned duties of the higher classification and has been receiving out of class pay. It has been determined that workload demands of the position and for the division calls for these duties to continue to prevent significant backlogs from occurring.

Within Santa Clara County, five out of seven municipal fire departments service fire department vehicles via personnel that are the equivalent to the City of Milpitas' Vehicle Maintenance Worker III classification. This classification provides for a higher level of expertise and provides the autonomous decision-making capacity required to service complex fire vehicles.

Therefore, a reclassification to the next higher level in the classification series, Vehicle Maintenance Worker III, would provide an appropriate salary commensurate with the job duties being performed. Additionally, historically, fire department maintenance has been provided by a journey level mechanic, equivalent to that of a Vehicle Maintenance Worker III. The action would adjust the incumbent's current monthly salary to the fourth step of the new salary range. Sufficient funds are available in the Department's budget. A review of this change was conducted with the appropriate bargaining unit.

Recommendation: Adopt a resolution approving the above recommendation to reclassify a regular, full-time classified employee, Mr. Eric Weisler, from his current classification of Vehicle Maintenance Worker II to the classification of Vehicle Maintenance III effective the first full pay period in January 2005.

XXI. BIDS AND CONTRACTS

- * 16. **Authorize the City Manager to Execute Agreement with Nicolay Consulting Group for Actuarial Valuation Service on Retiree Medical Benefits (Staff Contact: Emma Karlen, 586-3145)**

Background: The Government Accounting Standards Board recently issued Statement No. 45 - Accounting and Financial Reporting by Employers for Postemployment Benefits other than Pensions (GASB 45), to establish standards for measurement and note disclosures relating to retiree medical benefits in the annual financial reports. This new statement will apply to all the state and local governments that provide benefits to retirees including medical, dental, and other health-related benefits through a defined benefit plan. GASB 45 will not apply to pension benefits as pension accounting has its own standards and have already been fully disclosed in the financial statements.

The objectives of GASB 45 are to improve the usefulness of information included in the financial reports and to recognize the cost of retiree medical benefits while employees render services to the government. Similar to many other cities, the City of Milpitas funds the retiree medical benefits using the pay-as-you-go approach. There is a portion of reserve in the City's General Fund designated by the City Council for such purpose. However, the designated amount of approximately \$1.7 million has not been changed since fiscal year 1997. A separate trust fund has not been set up to receive or invest the designated amount. In order to determine the City's long-term liability based on the current level of retiree medical benefits provided to its active employees and retirees, GASB 45 requires the performance of actuarial valuation at least biennially.

A Request for Proposal was sent to various actuarial service providers. The City received eight proposals. After evaluation of the proposals and interviews, Nicolay Consulting Group was selected. Nicolay Consulting Group has 20 years of actuarial experience and has performed similar services for other cities. The fee for this service will not exceed \$14,400. Since this will be a biennial actuarial valuation, staff recommends authorizing the City Manager to execute agreement for the initial actuarial valuation plus an option to renew three more times based on satisfactory performance on the initial service.

Recommendation: Authorize the City Manager to execute agreement with Nicolay Consulting Group for actuarial valuation on retiree medical benefits, subject to approval as to form by the City Attorney.

- * 17. **Authorize City Manager to Execute Agreement Between the City of Milpitas and the County of Santa Clara for Acceptance of State Homeland Security Grant Funds (Staff Contact: Americo Silvi, 586-2810)**

Background: The County of Santa Clara (the Operational Area) was recently awarded federal grant funds through the Governor's Office of Emergency Services and the California Office of Homeland Security. The funds are distributed from the federal level, to the State Office of Homeland Security, through the Operational Area (County OES) as a central clearinghouse, and finally are distributed to the local jurisdictions. These funds are typically distributed on a per capita basis. This agreement includes four grants that are a FY 2003 CERT Grant, a FY 2003 Supplemental Emergency Management Performance Grant (EMPG), a FY 2004 Emergency Management Performance Grant (EMPG), and a FY 2004 Citizen Corps Grant. The total amount of \$15,646.97 will be utilized for the development of our CERT (SAFE) program, disaster planning, mitigation, and preparedness, and as an offset to Fire/OES salaries (EMPG). Included in the Council's packet are copies of the proposed agreement and the budget change form.

Recommendation:

1. Authorize City Manager to execute agreement between Santa Clara County and the City of Milpitas for acceptance of State Homeland Security Grant funds, subject to approval as to form by the City Attorney.
2. Approve budget appropriation in the amount of \$15,646.97 from Santa Clara County to the Fire Dept., OES budget.

- * 18. **Approve Agreement Amendment with Harris & Associates for Contract Engineering Services (Staff Contact: Mehdi Khaila, 586-3327)**

Background: On March 2, 2004, the City Council approved an agreement with Harris & Associates to provide engineering plan check services to work at City Hall as an extension of Land Development staff. As anticipated, some major private development projects with aggressive schedules will be submitting construction plans for review and approval in the next few months. In order to meet project schedules, staff is recommending that the agreement with Harris & Associates be amended for time extension and to increase the contract amount from \$100,000.00 to \$300,000.00. Sufficient funds for this fiscal year are available in the Engineering Division budget and it will be fully reimbursed from developer funds.

Recommendation: Approve agreement amendment with Harris & Associates and authorize City Manager to execute the same, subject to approval as to form by the City Attorney.

- * 19. **Approve Agreement Modifying Easement with PG&E: Telecommunication Antennas on PG&E Tower: Vasona Street: (Staff Contact: Mehdi Khaila, 586-3328)**

Background: The Planning Commission at its September 22, 2004 meeting approved the use permit for installation of a telecommunication antennas on existing PG&E electric transmission tower in the vicinity of Vasona Street and the Abel Street Overpass, subject to the execution of a

lease agreement. The existing PG&E electrical tower is located on City owned property where PG&E has an easement for electrical transmission facilities purposes. PG&E wishes to modify the existing easement to allow for the placement of telecommunication facilities. In consideration for obtaining additional easement rights staff has negotiated with PG&E to make a one-time payment of \$10,000 to the City. PG&E will also make site improvements, which include new landscaping, irrigation and wrought iron fencing around the tower. The Planning Commission Special Condition requiring a lease agreement for the proposed improvements on City property would be satisfied with the approval and execution of the Agreement Modifying Easement.

Recommendation: Authorize the City Manager to execute the Agreement Modifying Easement and related documents, subject to approval as to form by the City Attorney.

*** 20. Authorize the City Manager to Execute the Agreement: Design Engineers Group, Singley Area Reconstruction (Project No. 4200) (Staff Contact: Doug De Vries, 586-3313)**

Background: This project is included in the current five-year Capital Improvement Program (CIP). The project involves phase IV of the ongoing rehabilitation of various streets and courts in the Singley Area. Staff has interviewed several professional consultants in conformance with the City's consultant selection process, and recommends that Design Engineering Group provide the required engineering design services required to design the improvements for this project. Staff has negotiated a scope and fee for these services not to exceed \$188,502.20, which is considered reasonable for the work. A budget appropriation in the amount of \$60,000 from the Street Fund is proposed to cover the costs associated with this agreement amendment.

Recommendation:

1. Approve budget appropriation in the amount of \$60,000 from the Street Fund in to the Singley Area Street Rehabilitation project, CP 4200.
2. Authorize the City Manager to execute the agreement amendment with Design Engineers Group, in the amount of \$188,502.20, subject to approval as to form by the City Attorney.

*** 21. Award the Bid for the Purchase of Replacement Public Safety Dispatch Equipment (Staff Contact: Bart Damele, 586-3162)**

Background: Staff issued a Request for Quotation for replacement workstations for the Public Safety Computer Aided Dispatch (CAD) system. The new equipment, consisting of eight HP CAD workstations, is to be installed as part of the implementation of the new CAD system. Bid packets were sent to eleven bay area suppliers of HP equipment and nine responded. Microworld's bid was received late and not considered in the evaluation. The following is the recap of the nine quotes received including tax and freight:

<u>Bidder</u>	<u>Amount</u>
Surah	\$ 22,775.80
En Pointe Technology Sales Inc.	\$ 23,806.43
Zones	\$ 24,527.33
HPN Network	\$ 26,127.22
New Technical Solutions	\$ 26,326.40
Microworld	\$ 26,984.56
International Business Systems Inc.	\$ 33,245.45
PC Mall Gov	\$ 33,321.77
Computerland	\$ 39,827.34

Funds for the purchase of these workstations are available in the Expanded Public Safety Technology (CIP # 3389) project.

Recommendation: Award the bid for the purchase of the HP CAD workstations to the lowest bidder, Surah, in the amount of \$ 22,775.80 including tax and shipping.

XXII. CLAIMS AND DEMANDS

- * 22. **Approve Payment Requests: Miscellaneous Vendors/Contractors (Staff Contact: Bart Damele, 586-3162)**

Background: In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$ 11,341.50 to Resource Action Programs for educational material dealing with water conservation. The program, "Learning to be Waterwise," is a school educational program designed for students in the 5th grade and is planned to be implemented sometime in May 2005. (Funds are available in the Utility Engineering operating budget for this purchase.)

Recommendation: Approve the purchase request.

XXIII. ADJOURNMENT TO 6:00 P.M., TUESDAY, DECEMBER 14, 2004

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, DECEMBER 21, 2004, AT 7:00 P.M.**

CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
November 16, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

- 1. Conference with Legal Counsel – Existing Litigation**
(Pursuant to Government Code Section 54956.9(a))
Disalvo Claim: WCAB 79SJ68721 and 79SJ68722
- 2. Conference with Legal Counsel – Existing Litigation**
(Pursuant to Government Code Section 54956.9(a))
Beck Claim: WCAB SJ85305 and SJ85307
- 3. Conference with Real Property Negotiator**
(Pursuant to Government Code Section 54956.8)
Property: APN 086-05-009, 086-11-013 –
(County Surplus Property - Elmwood/KB Site in the vicinity of Abel Street)
Negotiating Parties: Redevelopment Agency, County of Santa Clara, KB Homes
Under Negotiation: Terms, Conditions, and Timing of Sale
- 4. Conference with Real Property Negotiator**
(Pursuant to Government Code Section 54956.8)
Property: APN 022-08-043 (195 N Main Street - Zion Church)
Negotiating Parties: Redevelopment Agency, Coldwell Banker
Under Negotiation: Terms and Conditions of Sale
- 5. Conference with Real Property Negotiator**
(Pursuant to Government Code Section 54956.8)
Property: APN 022-08-003 (Vacant property N. Main St., south of the
SR 237 W/B off-ramp & Main)
Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza
Under Negotiation: Terms and Conditions of Sale
- 6. Conference with Real Property Negotiator**
(Pursuant to Government Code Section 54956.8)
Property: APN 022-08-041 and APN 022-08-042 (163 North Main St. – Smith/DeVries House)
Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Mid-Peninsula
Housing Coalition, a California Non-Profit Public Benefit Corporation
Under Negotiation: Terms and Conditions of Sale
- 7. Conference with Real Property Negotiator**
(Pursuant to Government Code Section 54956.8)
Property: APN 028-24-014 and 028-24-015 (94, 110 and 130 Winsor Avenue), and APN 028-
24-020, and 028-24-026 (112 N. Main Street) in the vicinity of the new library site.
Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Robert Winsor,
Milpitas Transmission, Mountain Air,
Under Negotiation: Terms and Conditions of Sale

8. **Conference with Real Property Negotiator**
(Pursuant to Government Code Section 54956.8)
Property: APN 028-24-025 (86 North Main Street)
Negotiating Parties: Milpitas Redevelopment Agency and Rodriguez Family Trust, and tenants
Under Negotiation: Terms and Conditions of Sale
9. **Conference with Real Property Negotiator**
(Pursuant to Government Code Section 54956.8)
Property: APN 028-24-17, portion of (198 Winsor Avenue)
Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Apton Properties LLC
Under Negotiation: Terms and Conditions of Sale
10. **Conference with Legal Counsel – Anticipated Litigation**
(Pursuant to Government Code Section 54956.9[c])
Initiation of Litigation – One Case

- III. **CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present**
- IV. **PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. **APPROVAL OF MINUTES: November 2, 2004**
- VI. **SCHEDULE OF MEETINGS**
- VII. **PRESENTATIONS**

Presentations to Fifth Annual Neighborhood Beautification Award Winners:

Building a Sense of Community:

Winner:

- Natural Health Center, 485 Los Coches Street – Robin Hays

Nomination:

- Greater Love Church, 159 Dixon Road, – Deacon Percy Pennington and Pastor Johnnie Q. Jones

Attractive Non-Residential:

Winner:

- JMK Partnership Kirkorian Development – Victorian Square, 1191-1301 E. Calaveras Blvd.

Nominations:

- Business Park, 483-489 Los Coches Street -- Judith Gottfeld
- Greater Love Church, 159 Dixon Road – Deacon Percy & Pastor Jones

Staff Choice Award:

Winner:

- 439 Abbott Avenue – Mr. & Mrs. Martinez

Central Area:

Attractive Residential:

Winner:

- 482 Greathouse Drive – Joseph Sferrazzo

Nominations:

- 1625 Arizona Avenue – Kevin Broyles
- 1755 Arizona Avenue – Martha Mallory
- 250 Boulder Street – Mr. & Mrs. Gill
- 215 Boyd Street – Phi Chu
- 167 Callan Street – Mr. & Mrs. Magtoto
- 373 Chad Drive – Stephen Sullivan
- 1610 Cortez Street – Mr. & Mrs. Delgado
- 1039 Horcajo Circle – Mr. & Mrs. Schnepp
- 1005 Oregon Way – Vicki Holbert
- 448 Woodcock Court – Jorge Arreola

Attractive Multi-Family Units:

Winner:

- Friendly Village Mobile Home Park – 147 Via Santa Clara – Maria Cordero

Attractive Homeowners Associations:

Winner:

- Beresford HOA – 278 Woodward Drive – Mr. & Mrs. Huang

Hillside Area:

Attractive Residential:

Winner:

- 2237 North Park Victoria Drive – Mr. & Mrs. Mujtaba

Attractive Homeowners Association:

Winner:

- Calaveras Ridge HOA – 886 Calaveras Ridge – Mr. & Mrs. Mehta

East Valley Floor Area:

Attractive Residential:

Winner:

- 1845 Findley Drive – Mr. & Mrs. Arikata

Nominations:

- 125 Bixby Drive – Mr. & Mrs. Fell
- 1674 Jupiter Drive – Wendy Ngo
- 482 LaBaree Drive – Mr. & Mrs. Bugayong
- 1575 Mount Shasta Avenue – David Lipscomb

Attractive Multi-Family Units:

Winner:

- 389 – 391 Lynn Avenue – Dung Lam & Nancy Duong

Attractive Homeowners Association:

Winner:

- Hill Crest Villas HOA – 1016 Ridgemont Drive – Huong Ngo

West Area:

Attractive Residential:

Winner:

- 163 Butler Street – Mr. & Mrs. Hendershot

Attractive Multi-Family Units:

Winner:

- Duplex – 742 North Abel Street – Maria Guinto

Attractive Homeowners Association:

Winner:

- Starlight Pines HOA, 4800 Cedar Court – Juniel Butler

Nominations:

- Starlight Pines HOA – 24 Cedar Court – Mr. & Mrs. Rudsill
- Starlight Pines HOA, 32 Cedar Court – Mr. & Mrs. Brown
- Starlight HOA, 56 Cedar Court – Mariza Muhammad
- Starlight HOA, 64 Cedar Court – Mr. & Mrs. Haugen
- Starlight HOA, 1544 Fallen Leaf Drive – Mr. & Mrs. Santillan
- Starlight HOA, 1580 Fallen Leaf Drive – Gary Langhorst

(Refreshment Break)

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. ANNOUNCEMENT OF CONFLICT OF INTEREST

XI. MOMENTS OF REFLECTION

XII. APPROVAL OF AGENDA

XIII. CONSENT CALENDAR (Items with Asterisks)

XIV. PUBLIC HEARINGS

1. **Approve Solid Waste Franchise Extension, Program Changes and Rate Adjustments (Staff Contact: Darryl Wong, 586-3345)**
2. **Introduce Ordinance No. 38.766 (ZT2004-4) Amending Title XI, Chapter 10 (Planning, Zoning and Annexation) of the Municipal Code to Add Tutoring Centers in the High School District (Staff Contact: Staci Pereira, 586-3278)**

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor

RA2. Roll Call

RA3. Approval of Minutes: November 2, 2004

RA4. Approval of Agenda

- RA5. Acceptance of the City's Comprehensive Annual Financial Report, Component Unit Financial Statements, and Other Related Annual Audited Reports for the Fiscal Year Ended June 30, 2004 (Staff Contact: Jane Corpus, 586-3125)**
- RA6. City of Milpitas Financial Status Report for the Three Months Ended September 30, 2004 (Staff Contact: Emma Karlen, 586-3145)**
- RA7. Request for Special Meeting on December 9, 2004, to Conduct a Public Hearing and Consider Approval of the Elmwood Commercial and Residential Development Project**
- RA8. Agency Adjournment**

XVI. REPORTS OF OFFICERS AND BOARDS

- * 3. Approve the Mayor's Appointments and Reappointments to Commissions: Mayor Esteves**

XVII. UNFINISHED BUSINESS (None)

XVIII. NEW BUSINESS

- * 4. Approve Filling Vacant Position: City Engineer (Staff Contact: Cherie Rosenquist, 586-3082)**
- * 5. Future Theme of the City Calendar (Staff Contact: Kathleen Yurchak, 586-3209)**

XIX. ORDINANCES (None)

XX. RESOLUTIONS

- * 6. Resolution Granting Final Acceptance: Summerfield Subdivision (Project No. 3043), Tract Nos. 8912, 8913, and 8914 (Staff Contact: Robert Wang, 586-3327)**
- * 7. Adopt Resolution Granting Final Acceptance: Singley Area Rehabilitation, Phase II, (Project No: 4200) (Staff Contact: Doug DeVries, 586-3313)**

XXI. BIDS AND CONTRACTS

- * 8. Approve Senior Nutrition Contract with Compass Group USA, Inc. (Bateman Division) and Authorize Payment (Staff Contact: Kathleen Yurchak, 586-3209)**
- * 9. Award Bid to Furnish and Install Three Pro-Video Monitors in the City's Traffic Control Room and to Furnish and Install a Five Camera Digital Recording Surveillance System at Fire Station One (Project No. 8109) (Staff Contact: Terry Medina, 586-2703)**
- * 10. Award Construction Contract: Great Mall Parkway / I880 Capacity Improvements (Project No. 4178) (Staff Contact: Greg Armendariz, 586-3401)**
- * 11. Approve Contract Renewal for Employee Assistance Program Services with Managed Health Network, Inc. (Staff Contact: Cherie Rosenquist, 586-3082)**
- * 12. Approve Agreement Amendment: TY Lin International, formerly CCS Planning and Engineering, Inc., for Traffic Engineering Support (Project No. 4189) (Staff Contact: Mike McNeely, 586-3301)**
- * 13. Approve First Amendment to the Memorandum of Agreement for the Santa Clara Valley Urban Runoff Pollution Prevention Program (Staff Contact: Darryl Wong, 586-3345)**

- * 14. **Authorize the City Engineer to Execute Contract Change Orders: Piedmont Road Bike Lane and Sidewalk Improvements at St. John's Cemetery (Project No. 4214) (Staff Contact: Doug De Vries, 586-3313)**
- * 15. **Authorize the City Manager to Execute the Agreement: Raines, Melton & Carella, Inc, Sewer Deficiency and Structural Correction Program (Project No. 6073) (Staff Contact: Doug DeVries, 586-3313)**
- * 16. **Authorize the City Manager to Execute Agreement: Olivia Chen Consultants, Gibraltar Reservoir and Pump Station Improvements (Project No. 7101) (Staff Contact: Doug De Vries, 586-3313)**
- * 17. **Award Bid for the Purchase of Replacement Motorola Astro Spectra Motorcycle Radios (Staff Contact: Bart Damele, 586-3162)**
- * 18. **Award the Bid for the Purchase of Replacement Public Safety Base Station Radio Equipment (Staff Contact: Bart Damele, 586-3162)**
- * 19. **Award Construction Contract: Abel/Calaveras Right Turn Lane Project (Project No. 4186) (Staff Contact: G. Armendariz, 586-3401)**
- * 20. **Authorize the City Manager to Negotiate a Contract with Dyett and Bhatia, Urban and Regional Planners, to Conduct Community Visioning and Prepare Concept Plans for the 364-acre Area Around the Light Rail and Future Montague/Capitol BART Stations – Midtown Transit Sub-area (Staff Contacts: Tambri Heyden, 586-3280 and Joe Oliva, 586-3290)**

XXII. CLAIMS AND DEMANDS

- * 21. **Approve Payment Requests: Miscellaneous Vendors/Contractors (Staff Contact: Bart Damele, 586-3162)**

XXIII. ADJOURNMENT TO 6:00 P.M., TUESDAY, DECEMBER 7, 2004, FOR SWEARING IN OF NEW COUNCIL

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, DECEMBER 7, 2004, AT 7:00 P.M.**

CITY OF MILPITAS
Agenda Reports
Milpitas City Council Meeting
November 16, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

XIV. PUBLIC HEARINGS

1. Approve Solid Waste Franchise Extension, Program Changes and Rate Adjustments (Staff Contact: Darryl Wong, 586-3345)

Background: Recycling, yard waste and solid waste services are provided for residential and commercial customers by Browning Ferris Industries Waste Systems of North America, Incorporated (BFI) under two agreements, 1) the Agreement for Collection and Disposal of Solid Waste between the City of Milpitas and BFI Waste Systems of North America, Inc., and 2) Agreement between BFI Waste Systems of North America, Inc. and the City of Milpitas for Residential Yard Trimmings Collection and Processing Services. Both agreements expire in the year 2007.

On May 18, 2004, the City Council approved an amendment to the Collection and Disposal of Solid Waste agreement under which BFI would also provide street sweeping services to the City. Under the amendment, the City agreed to consider a subsequent amendment to extend the agreement to September 5, 2017 in exchange for street-sweeping services at no cost during the calendar years 2004-2008, which is valued in excess of \$900,000.

The currently proposed agreements with BFI provide for rate adjustments and service improvements. A memorandum discussing both the extension of solid waste services to September 5, 2017, and the proposed program changes and rate adjustments is included in the Council packet. Following is a summary:

- **General:**

- **Street Sweeping Services.** Street sweeping services for residential, and commercial areas of the City is included as part of the Solid Waste collection and disposal agreement. Increased reporting of volumes collected and miles swept is included. Street sweeping services through 2008 calendar year are provided at no cost to the City;
- **Agreement Extension.** The Solid Waste collection and disposal, and the Yard Waste collection is extended for an additional ten years until September 5, 2017;
- **Rates.** The last rate increases were in January 2001 for residential and January 2003 for commercial. The current proposed adjustments are for calendar years 2005, 2006 and 2007. Needed rate increases are proposed to be spread over a three-year period on an equal percentage basis for a single-family residential customers. For instance, 2005 single-family rates would increase by \$1.13 per month – from \$22.42 to \$23.55. Even with these increases, Milpitas rates remain among the lowest when compared with neighboring communities. A one time 3-year schedule is proposed to accommodate improvements to the residential recycle collection program (single stream collection) to occur during calendar year 2006 that require purchase of new collection equipment during 2005. Biennial adjustments would resume thereafter.

- **Proposed New Collection Services and Upgrades:**

- **Single Stream Recycle Collection.** Existing single family multiple recycle tubs would be replaced with a single commingled container for plastic, cans and paper. Recycling efficiencies for single-family customers would result since sorting and separate handling of small recycled items are avoided. This service using 64-gallon wheeled carts is proposed beginning February 1, 2006.

- **Neighborhood Cleanups.** Up to 10 annual neighborhood clean-up events where trash and recycle collection bins and personnel would be provided by BFI;
- **Senior Bulk Service.** Two annual free bulk service pickups for senior citizens
- **Scout Trucks.** Smaller trucks to provide accessibility to confined locations in Midtown and appropriate multifamily residential areas;
- **Leak Proof Bin Program.** Increased BFI self-monitoring, testing, and reporting;
- **Graffiti program.** Contractually formalizes abatement of graffiti on containers
- **Late Fees.** For multi-family, mobile home, and commercial customers similar to single family solid waste and water and sewer fees recently approved;
- **Ordinance Revision:** Allows the City to require mandatory customer payment for BFI to push and return bins when customers have not been returning bins to enclosures.
- **Outreach Upgrades.** Increased grants to Milpitas Unified School District educational coordination and improvements to customer BFI web access;

- **PROPOSED RATE ADJUSTMENTS:** The proposed rate adjustments are shown in Tables 1 through 3. The new rates would be effective for service beginning January 1, 2005, with rates changes in 2006 and 2007. Major factors contributing to the proposed rate adjustment are:

- **Cost of Living Adjustments.** As specified in the agreements based on 75% of the change in the Consumer Price Index.
- **Extraordinary Costs for Landfill Improvements.** Required to comply with federal groundwater protection regulations;
- **Administrative Cost.** County and City administrative costs to support solid waste program activities including regional Household Hazardous Waste Programs,
- **Service improvements** described above.

Table 1 – Proposed Single Family Monthly Rates

Service Type	Existing	2005	2006	2007
Single Unit	\$22.42	\$23.55	\$24.73	\$25.97
Senior	\$11.21	\$11.77	\$12.36	\$12.98
Cart Rental	\$2.53	\$2.62	\$2.62	\$2.62
Bulky Item Pickup (non senior)	\$43.41	\$44.93	\$44.93	\$44.93

Table 2 – Proposed Mobile Home/Multi-Unit Rates

Service Type	Existing	2005	2006	2007
Mobile Home Parks 1 can	\$6.23	\$6.54	\$6.87	\$7.22

Mobile Home Parks 2 cans	\$9.57	\$10.05	\$10.55	\$11.08
Multi-Unit Front end load Solid Waste	\$124.77	\$128.87	\$133.10	\$137.47
Multi-Unit Compactors (per CY) (b)	\$13.21	\$14.16	\$15.18	\$16.27

Table 3 – Proposed Commercial Rates

Service Type	Annual % Increase		
<i>Solid Waste</i>	2005	2006	2007
Front Load	Varies from 3.2% to 4.7% per year		
Roll Off	Varies from 3.9% to 6.9% per year		
Compactors (per CY)	6.3%	6.3%	6.3%
Extra Pickups	3.5%	0%	0%
Push & Return Service	3.5%	0%	0%
<i>Recycling</i>			
Roll Off	1.7%	1.7%.	1.7%
Compactors	1.8%	1.8%	1.8%

Recommendation:

1. Close the Public Hearing.
 2. Waive the reading beyond the title.
 3. Introduce Ordinance No. 48.16 setting Solid Waste program provisions.
 4. Adopt the resolution for new solid waste rates.
 5. Authorize the City Manager to execute the revisions to the agreements, subject to City Attorney approval as to form.
- 2. Introduce Ordinance No. 38.766 (ZT2004-4) Amending Title XI, Chapter 10 (Planning, Zoning and Annexation) of the Municipal Code to Add Tutoring Centers in the High School District (Staff Contact: Staci Pereira, 586-3278)**

Background: At the October 13th Planning Commission meeting, staff presented a proposed zoning text amendment that would permit tutoring centers in the Highway Service (HS) zoning district. The amendment stems from an increase in the demand for tutoring centers within the City in the recent years. Staff processed a zoning text amendment (Ordinance No. 38.761) in May of 2003 that added tutoring centers to the General Commercial (C2) and Town Center (TC) zoning districts as a permitted use. Prior to this amendment, the zoning code did not address tutoring centers.

Adding tutoring centers as a conditional use in the Highway Service (HS) district would provide more opportunity for tutoring centers to locate within the City, which is currently limited to two districts. As a conditional use, staff would review the application and address any concerns with parking and hours of operation that may conflict with other businesses in the area.

The Planning Commission held a public hearing on October 27, 2004, where the item was recommended to the City Council for approval. The Planning Commission staff reports and meeting minutes are incorporated into the Council's agenda packet.

Recommendation:

1. Close the public hearing.
2. Waive reading beyond the title; and introduce Ordinance No. 38.766 (Zoning Ordinance Text Amendment No. ZT2004-4)

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor

RA2. Roll Call

RA3. Approval of Minutes: November 2, 2004

RA4. Approval of Agenda

RA5. Acceptance of the City's Comprehensive Annual Financial Report, Component Unit Financial Statements, and Other Related Annual Audited Reports for the Fiscal Year Ended June 30, 2004 (Staff Contact: Jane Corpus, 586-3125)

Background: Transmitted herewith is the Comprehensive Annual Financial Report (CAFR) of the City of Milpitas, Milpitas Redevelopment Agency Component Unit Financial Statements, Milpitas Public Financing Authority Component Unit Financial Statements, Single Audit Report, Bicycle/Pedestrian Projects Financial Statements, Agreed Upon Procedures Report on Compliance with the Appropriations Limit Increment and the Memorandum on Internal Control Structure for the fiscal year ended June 30, 2004.

Comprehensive Annual Financial Report (CAFR) of the City of Milpitas

The CAFR includes an unqualified audit opinion from Maze & Associates, the City's external auditors, that the financial statements present fairly the results of operations for the year ended June 30, 2004, in conformance with Generally Accepted Accounting Principles (GAAP).

Milpitas Redevelopment Agency Component Unit Financial Statements

The Milpitas Redevelopment Agency is a component unit of the City of Milpitas. The accompanying component unit financial statements present the operations and financial activity of the Milpitas Redevelopment Agency including the Agency's redevelopment project fund, debt service fund, and housing reserve fund.

The Agency's Component Unit Financial Statements include an unqualified audit opinion from Maze & Associates, the Agency's external auditors, that the financial statements present fairly the results of operations for the year ended June 30, 2004, in conformance with GAAP.

The report from Maze & Associates also includes a Compliance Report indicating that the Agency complied, in all material respects, with provisions of laws and regulations contained in the Guidelines for Compliance Audits of California Redevelopment Agencies issued by the State Controller's Office.

Milpitas Public Financing Authority Component Unit Financial Statements

The Milpitas Public Financing Authority is a Joint Powers Authority organized by the City of Milpitas and the Milpitas Redevelopment Agency to provide assistance to the City and Redevelopment Agency in financing public improvements for the benefit of the residents of the City and surrounding areas.

The accompanying component unit financial statements present the operations and financial activity of the Authority's debt service fund. Administrative and related normal business expenditures incurred in the day-to-day operations of the Authority are provided by the City and are not included in the accompanying financial statements.

The Authority's Component Unit Financial Statements include an unqualified audit opinion from Maze & Associates, the Authority's external auditors, that the financial statements present fairly the results of operations for the year ended June 30, 2004, in conformance with GAAP.

Single Audit Report

The Single Audit Report for the fiscal year ended June 30, 2004 includes the Summary of Findings and Questioned Costs, Schedule of Expenditures of Federal Awards, Report on Compliance and on Internal Control Over Financial Reporting Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards, and the Report on Compliance and Internal Control Over Compliance Applicable to Each Major Federal Award Program. These reports did not disclose any reportable conditions, or material weaknesses. The results of their tests disclosed no instances of noncompliance.

Bicycle/Pedestrian Projects Financial Statements

The Bicycle/Pedestrian Projects Financial Statements includes Bicycle/Pedestrian Projects that were developed using Transportation Development Act (TDA) grants. The auditor issued an unqualified opinion on these statements.

Agreed Upon Procedures Report on Compliance with the Appropriations Limit Increment

This report shows the auditor applied specific procedures to validate the City's Appropriations Limit calculations.

Memorandum on Internal Control Structure

Under generally accepted auditing standards, our auditors are encouraged to report certain matters regarding the City's internal control structure. The City's auditors have provided such a report in their Memorandum on Internal Control Structure ("Management Letter") for the Year Ended June 30, 2004. This report includes management responses to the auditor's letter.

It should be noted that the auditors do not view any of their comments as material weaknesses or significant deficiencies. Rather, they represent noteworthy items from an objective and independent perspective.

Recommendation: Note receipt and file.

RA6. City of Milpitas Financial Status Report for the Three Months Ended September 30, 2004 (Staff Contact: Emma Karlen, 586-3145)

Background: The Finance Department will present a review of the City's financial status for the three months ended September 30, 2004.

Recommendation: Receive staff report.

RA7. Request for Special Meeting on December 9, 2004 to Conduct a Public Hearing and Consider Approval of the Elmwood Commercial and Residential Development Project

Background: Due to weather and environmental mitigation related issues, the Elmwood Commercial and Residential Development Project is time sensitive. The time frame to implement certain mitigation measures is extremely limited and a delay of even a week may cause the window of opportunity to close, which could produce a delay of nearly a year in project's implementation. The project proponents and City staff share a collective desire to allow as much time as possible to conduct required preconstruction mitigation if the project should be approved. In order to bring the package of approvals before the City Council and Redevelopment Agency in a timely manner, the applicants and City staff have adhered to an aggressive schedule. The Regular City Council meeting of December 7, 2004, had originally been identified as the target date for Council/Agency consideration. However, the 2004 election results will be certified on December 7, and the first meeting of new Council is typically accompanied with ceremony and recognitions. Therefore, to afford Council the greatest opportunity for ceremony without

impacting the schedule for the Elmwood Project, it is recommended that the Council call for a special meeting of the City Council and Redevelopment Agency on December 9, 2004, to conduct a Public Hearing and consider approval of the Elmwood commercial and residential development project.

Recommendation: Approve a Special Meeting of the Council and Redevelopment Agency on December 9, 2004, to conduct a Public Hearing and consider approval of the Elmwood commercial and residential development project.

RA8. Agency Adjournment

XVI. REPORTS OF OFFICERS AND BOARDS

*** 3. Approve the Mayor's Appointments to the Following Commissions: Mayor Esteves**

Background: Mayor Esteves is recommending the following appointments and reappointments:

Arts Commission

Reappoint Bill Foulk, Robin Hays, and Mareile Ogle to new three-year terms expiring October 2007.

Bicycle Commission

Reappoint Miljon Buquing to a new two-year term expiring August 2006.

Recycling & Source Reduction Commission

Reappoint Steve Ybarra to a new three-year term expiring October 2007.

Sister Cities Commission

Reappoint Debra Garcia, Arlyn Swiger, and Linda Downey to new three-year terms expiring September 2007, and reappoint Roselda Mateo, Alternate No. 1, to a new two-year term expiring September 2006.

Youth Commission

Reappoint Joseph Hall, Lindsey Munzel, and Justin Nguyen to new one-year terms expiring September 2005, and appoint Kumuda Rao to the Alternate No. 1 position with a term expiring September 2005.

Copies of current applications for these commissions are included in the Council's agenda packets.

Recommendation: Approve the Mayor's appointments and reappointments.

XVII. UNFINISHED BUSINESS (None)

XVIII. NEW BUSINESS

*** 4. Approve Filling Vacant Position: City Engineer (Staff Contact: Cherie Rosenquist, 586-3082)**

Background: A vacancy will occur in a key management position due to retirement. The City Engineer has given notice and will retire in December. The City Manager is requesting that this essential position be filled to provide ongoing leadership to the Engineering Division.

Sufficient funds are included in the fiscal year 2004-05 budget to cover salary and benefits. Staff would also request that if the vacancy were filled through an internal promotion, that the resulting vacancy be filled as well.

Recommendation: Approve filling the City Engineer position.

* **5. Future Theme of the City Calendar (Staff Contact: Kathleen Yurchak, 586-3209)**

Background: At the November 3, 2004, Community Advisory Commission meeting, staff presented the concept of entitling future city calendars themes “City of Milpitas Community Calendar” which will generalize the calendar and not necessarily focus on one given theme. Over the past few years it has become increasingly difficult to develop new themes and very apparent that the photos of the calendars no matter what the theme is represents Milpitas’ diversity through city and community programs, the neighborhoods and the residents. The Community Advisory Commission was receptive to this idea and has recommended to the City Council to entitle future city calendars “City of Milpitas Community Calendar” which will eliminate duplicating themes and the difficulty of receiving community participation for photos. Photos will continue to represent the entire City of Milpitas. Past calendar themes have included: 1998 – Milpitas, City with a Heart, 1999 - Community Pride, 2000 - Milpitas Celebrates the Year 2000, 2001 - What Milpitas Means to Me..., 2002 - Beautiful Places in Milpitas, 2003 - Celebrating Community Events, 2004 - Celebrating 50 Years, 2005 – Milpitas At Its Best.

Recommendation: Approve titling future city calendars “City of Milpitas Community Calendar.”

XIX. ORDINANCES (None)

XX. RESOLUTIONS

* **6. Resolution Granting Final Acceptance: Summerfield Subdivision (Project No. 3043), Tract Nos. 8912, 8913, and 8914 (Staff Contact: Robert Wang, 586-3327)**

Background: These projects have passed the one-year warranty period. A final inspection has been made and the public improvements, which include underground facilities (storm, water, and sewer lines), streets, sidewalks, and lighting, are satisfactory. Therefore, a final acceptance may be granted and the developer’s bond may be released.

Recommendation: Adopt resolution granting final acceptance and release of the bond.

* **7. Adopt Resolution Granting Final Acceptance: Singley Area Rehabilitation, Phase II, (Project No: 4200) (Staff Contact: Doug DeVries, 586-3313)**

Background: This project provided stabilization of street sub-grade, re-established street drainage and repaired the street surface. City Council initially accepted this project on November 18, 2003. The one-year project warranty period has passed. Staff conducted a final project inspection and has determined the work to be satisfactory. Therefore, the Council may grant final acceptance and the contractor’s bond may be released.

Recommendation: Adopt resolution granting final acceptance and release of the Contractors bond.

XXI. BIDS AND CONTRACTS

* **8. Approve Senior Nutrition Contract with Compass Group USA, Inc. (Bateman Division) and Authorize Payment (Staff Contact: Kathleen Yurchak, 586-3209)**

Background: The City of Milpitas has contracted with the County of Santa Clara in implementing the Senior Nutrition Program since March 1978. Compass Group USA, Inc. known as Bateman has been catering the Senior Nutrition Program since July 1, 1998. The program serves seniors, sixty years and older, and Bateman meals will be served 150 days per year, an average of 75 meals per day, for a total of 11,250 meals per year. Enclosed in the Council’s

packet is the contract, between Bateman and the City of Milpitas, which details the specifications of the contract terms for July 1, 2004 through June 30, 2005, for the Nutrition Program food costs totaling \$34,864. Bateman agrees to provide meals at \$3.64 each, which will not exceed the approved budgeted amount of \$34,864, for FY 2004-2005. The contract is subject to approval as to form by the City Attorney. Staff received the contract from Bateman on November 4, 2004, which is why the contract has been delayed in bringing it to the City Council for approval. Staff has been working off an open purchase order with encumbered funds, therefore not causing a delay in service to our Senior Nutrition Program participants.

Recommendation: Approve the contract and authorize payment to Bateman, Compass Group USA, Inc. for July 1, 2004, through June 30, 2005, not to exceed \$3.64 per meal, subject to approval as to form by the City Attorney. Sufficient funds have been approved in Recreation Services' FY 2004-2005 operating budget.

- * 9. **Award Bid to Furnish and Install Three Pro-Video Monitors in the City's Traffic Control Room and to Furnish and Install a Five Camera Digital Recording Surveillance System at Fire Station One (Project No. 8109) (Staff Contact: Terry Medina, 586-2703)**

Background: Staff requested quotations from seven Access Control companies to furnish and install 3 pro-video monitors in the City's Traffic Control Room and to furnish and install a five-camera digital recording surveillance system at Fire Station 1. The new video monitors will be connected to the 3 digital video recorders that are installed in the Traffic Control Room. The five-camera digital recording system will be used to monitor the exterior entrances at Fire Station One.

The following is the recap of bids received from the six vendors that responded including tax:

<u>Bidder</u>	<u>Amount</u>
Delta Wireless & Network Solutions	\$ 22,378.14
Northland Control Systems, Inc	\$ 22,550.32
West Coast Security	\$ 23,190.79
Network Design Communications	\$ 24,053.45
First Alarm	\$ 28,962.53
Integrated Security Professionals	\$ 29,941.57

After an extensive review of the bids and discussions with the apparent lowest bidder it was determined that the lowest qualified bidder was Northland Control Systems, Inc. in the amount of \$22,550.32. There are sufficient funds available in the Desktop Technology Capital Improvement Program (Project 8109) for the purchase of the video monitors and video surveillance system.

Recommendation: Award the bid for the purchase and installation of 3 video monitors and a 5-camera video surveillance system to the lowest qualified bidder, Northland Control Systems, Inc. in the amount of \$22,550.32, subject to approval as to form by the City Attorney

- * 10. **Award Construction Contract: Great Mall Parkway / I880 Capacity Improvements (Project No. 4178) (Staff Contact: Greg Armendariz, 586-3401)**

Background: On June 15, 2004, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals.

This project provides an increase in the traffic capacity of the existing Great Mall Parkway/I880 interchange. Improvements include widening the southbound off ramp and adding a third eastbound thru lane at the northbound ramps. The project will also include the relocation of pedestrian walkways and ramps, relocation of utility appurtenances and associated signal modifications. The Engineer's estimated construction cost is \$550,000.00.

This project is located within the Caltrans right-of-way. Caltrans requires night work for all work within its right-of-way. The project was advertised and sealed bid proposals were opened on October 21, 2004. The bid proposals ranged from \$413,321 to \$629,460, and the lowest responsible bidder is determined to be Granite Rock. Sufficient funds are available in the project budget to award this project.

Recommendation: Award Construction Contract to Granite Rock in the amount of \$413,321, subject to approval as to form by the City Attorney.

* **11. Approve Contract Renewal for Employee Assistance Program Services with Managed Health Network, Inc. (Staff Contact: Cherie Rosenquist 586-3082)**

Background: Managed Health Network, Inc. (MHN) provides counseling assistance services for the City's employees and their families. Staff recommends renewal of the MHN contract for 2005, which includes a 4% increase.

Recommendation: Authorize staff to enter into a contract for an Employee Assistance Program (EAP) with Managed Health Network (MHN) for the period January 1 through December 31, 2005, not to exceed \$33,537.60, subject to approval as to form by the City Attorney.

* **12. Approve Agreement Amendment: TY Lin International, formerly CCS Planning and Engineering, Inc., for Traffic Engineering Support (Project No. 4189) (Staff Contact: Mike McNeely, 586-3301)**

Background: The Engineering firm of TY Lin, Inc. (Formerly CCS Planning and Engineering) is currently providing assistance for operational matters and development reviews. Staff is recommending that these services continue with a not to exceed amount of \$50,000. This amount is estimated to cover the needed services through fiscal year 2004-05, depending on the level of development reviews necessary. There are sufficient funds available in CIP Project No. 4189 and developer accounts.

Recommendation: Authorize City Engineer to execute agreement amendment with TY Lin International at not-to-exceed amount of \$50,000, subject to approval as to form by the City Attorney.

* **13. Approve First Amendment to the Memorandum of Agreement for the Santa Clara Valley Urban Runoff Pollution Prevention Program (Staff Contact: Darryl Wong, 586-3345)**

Background: This request is for approval of an amendment to a Memorandum of Agreement (MOA) among the thirteen Regional Water Quality Urban Runoff Pollution Prevention Program discharge co-permittees, including Milpitas, in Santa Clara County. The permit requires agencies that have stormwater collection systems to manage and enforce activities to minimize pollutant discharges. The MOA serves as the basis for jointly implementing and coordinating the Santa Clara Valley Urban Runoff Pollution Prevention Program in order to maximize efficiencies, consistency, and economy-of-scale savings for evaluations, performance standard development, regional outreach, annual management plan/status submittals, and other mandated permit activities. The existing MOA terminates on March 10, 2005.

The proposed amendment will extend the agreement, which was originally approved by Milpitas on December 7, 1999, until any participating party elects to terminate the agreement with 30 days advanced written notice. No other MOA changes are proposed. Copies of the recommended amendment and the existing agreement may be found in the Council's packet.

Recommendation: Approve and Authorize the City Manager to sign the first amendment to the Memorandum of Agreement for the Santa Clara Valley Urban Runoff Pollution Prevention Program.

- * 14. **Authorize the City Engineer to Execute Contract Change Orders: Piedmont Road Bike Lane and Sidewalk Improvements at St. John's Cemetery (Project No. 4214) (Staff Contact: Doug De Vries, 586-3313)**

Background: The City Council awarded this project to Grade Tech, Inc. on February 17, 2004, and construction is nearly completed. The completed project provides new curb, gutter, sidewalk and bike lane along the west side of Piedmont Road in front of St. John's Cemetery. This project also provides new pavement on Piedmont Road between Yosemite Drive and Aguilar Court.

Staff recommends that additional work to install 105 feet of 2"x12" retaining wall in the landscaping area along the north end of St. John's Cemetery to retain the necessary slope for planting. Staff has negotiated a fee not to exceed \$7,155 with the Contractor for this additional work, and the approval of a contract change order is requested. Sufficient funds are available in the project budget for this change order.

Recommendation: Authorize the City Engineer to execute the Contract Change Order for Grade Tech, Inc. in the amount of not to exceed \$7,155.

- * 15. **Authorize the City Manager to Execute the Agreement: Raines, Melton & Carella, Inc, Sewer Deficiency and Structural Correction Program (Project No. 6073) (Staff Contact: Doug DeVries, 586-3313)**

Background: This project is included in the current Capital Improvement Program (CIP). The current phase of the project involves the rehabilitation of four critical locations and condition assessment of 15 additional locations including Close Circuit Television (CCTV) evaluation for 10 of these locations. This effort will reduce the risk of sewer leakage and reduce maintenance costs, costs for the selected four locations and identify specific rehabilitation needs for 15 additional locations.

Staff has interviewed several professional consultants in conformance with the City's consultant selection process, and recommends that Raines, Melton & Carella provide the required Engineering Consulting services required to design the improvements for this project. Staff has negotiated a scope and fee for these services not to exceed Two Hundred Thirty Thousand (\$230,000), which is considered reasonable for the work. There are sufficient funds in the project budget to cover this expense.

Recommendation: Authorize the City Manager to execute the agreement amendment with Raines, Melton & Carella, Inc, in the amount of \$230,000, subject to approval as to form by the City Attorney.

- * 16. **Authorize the City Manager to Execute Agreement: Olivia Chen Consultants, Gibraltar Reservoir and Pump Station Improvements (Project No. 7101) (Staff Contact: Doug De Vries, 586-3313)**

Background: This project is included in the current five-year Capital Improvement Program (CIP). The project involves the rehabilitation of equipment at the Gibraltar Pump Station. Due to the risk of pump failure and increased maintenance costs, staff recommends that the rehabilitation project commence in the year 2004/05. The study will develop and evaluate alternative pump, and valving reconfigurations.

Staff has interviewed several professional consultants in conformance with the City's consultant selection process, and recommends that Olivia Chen Consultants provide the required engineering consulting services. Staff has negotiated a scope and fee for these services not to exceed \$47,779, which is considered reasonable for the work.

A budget appropriation in the amount of \$55,000 from the Water Fund is proposed to cover the costs associated with this agreement amendment, contingency, and overhead costs. There are sufficient funds in this account to cover these costs.

Recommendation:

1. Authorize the City Manager to execute the agreement amendment with Olivia Chen Consultants, in the amount of \$47,779, subject to approval as to form by the City Attorney.
2. Approve budget appropriation in the amount of \$55,000 from the Water Fund to Project No. 7101 Gibraltar Reservoir & Pump Station Improvements.

*** 17. Award Bid for the Purchase of Replacement Motorola Astro Spectra Motorcycle Radios (Staff Contact: Bart Damele, 586-3162)**

Background: Staff issued a Request for Quotations for Motorola Astro Spectra motorcycle radios to replace existing outdated equipment. Bid packets were sent to the seven Bay Area suppliers of Motorola equipment and three responded. The following is the recap of the three quotes received including tax and freight:

<u>Bidder</u>	<u>Amount</u>
TelePath Corp.	\$ 32,880.94
Motorola Inc.	\$ 36,247.95
Day Wireless	\$ 45,216.23

There are sufficient funds in the Mobile Radio Replacement Plan Capital Improvement Project (#8125) budget for the purchase of the radio systems and accessories.

Recommendation: Award the bid for the purchase of motorcycle radios to the lowest bidder, TelePath Corp, in the amount of \$ 32,880.94 including tax and shipping.

*** 18. Award the Bid for the Purchase of Replacement Public Safety Base Station Radio Equipment (Staff Contact: Bart Damele, 586-3162)**

Background: Staff issued a Request for Quotation for replacing a portion of the Public Safety two-way communication base radio system and ancillary equipment. These transmitters, repeaters and channel monitors are replacing existing infrastructure equipment that is between 10 and 16 years old and have been included in this fiscal year's capital outlay budget for replacement. Bid packets were sent to the seven Bay Area suppliers of Motorola equipment and three responded. The bid response of Total Radio Inc. was incomplete and not considered in the evaluation. The following is the recap of the three quotes received including tax and freight:

<u>Bidder</u>	<u>Amount</u>
TelePath Corp.	\$ 113,664.28
Day Wireless	\$ 118,751.22
Motorola Inc.	\$ 123,423.97

There are sufficient funds in the Mobile Radio Replacement Plan Capital Improvement Project (#8125) budget for the purchase of the radio systems and accessories.

Recommendation: Award the bid for the purchase of the two-way base radio equipment to the lowest bidder, TelePath Corp, in the amount of \$113,664.28 including tax and shipping.

*** 19. Award Construction Contract: Abel/Calaveras Right Turn Lane Project (Project No. 4186) (Staff Contact: G. Armendariz, 586-3401)**

Background: On October 19, 2004, the City Council approved the project plans and specifications and authorized the readvertisement for construction bid proposals. This project provides a right turn lane from northbound Abel Street to eastbound Calaveras Blvd., modifications to the Carlo Street intersection, including closure of eastbound Carlo Street. Caltrans permit requires all work for this project to be completed at night.

The project was advertised and sealed bid proposals were opened on November 5, 2004. The bid proposals ranged from \$674,992.00 to \$816,312. During review of the bid it was determined that there is a bid irregularity with the low bidder. After review with City Attorney the irregularity was found to be minor and can be waived by Council. Accordingly, the project should be recommended for award to the lowest responsible bidder, O.C. Jones & Sons. Funding shall be provided from Project No. 4186 and as set forth in the exclusive Negotiating Rights Agreement among the County of Santa Clara, the City of Milpitas, and Milpitas Redevelopment Agency, adopted by the City of Milpitas on June 3, 2003, through Resolution 7313 and in Article 9 of the agreement for purchase and sale of real property between the County of Santa Clara and KB Homes South bay, Inc., adopted on August 19, 2004.

Recommendation:

1. Waive minor bid irregularity.
2. Award Construction Contract to O.C. Jones & Sons in the amount of \$674,992.00.

- * 20. **Authorize the City Manager to Negotiate a Contract with Dyett and Bhatia, Urban and Regional Planners, to Conduct Community Visioning and Prepare Concept Plans for the 364-acre Area Around the Light Rail and Future Montague/Capitol BART Stations – Midtown Transit Sub-area (Staff Contacts: Tambri Heyden, 586-3280 and Joe Oliva, 586-3290)**

Background: To implement the Planning and Neighborhood Services Department's budget objective and work plan item of completing a transit area plan, staff solicited qualifications to assist with preparation of the plan. The request for qualifications (RFQ) sought firms to assist with preparation of a transit sub-area plan for the 364-acre area surrounding the future Montague/Capitol BART station and the two existing VTA light rail line stations. The plan area, depicted on the map within the Council's agenda packet, includes such key locations as the Great Mall, the Waukesha properties and Midtown's south precise plan area where many trucking and automotive-related uses exist on numerous small parcels.

Due to the length of time to conduct a comprehensive transit area plan, complete with environmental clearance, design guidelines and general plan, specific plan and zoning code amendments and given the recent, strong development interest in sites within the plan area, a more expeditious process is recommended at this point in time to phase this effort. Thus, staff recommends a four month process to develop a vision that is grounded in market reality and to produce a much needed product that can be used by the City to evaluate new development to ensure it fits within the long term vision and does not preclude future options.

Given their strong expertise in transit area planning and community visioning, as well as their graphic capabilities, city staff proposes to retain the services of Dyett and Bhatia Urban and Regional Planners for this community visioning and conceptual plan process. Dyett and Bhatia would perform the work in association with Economics Research Associates, Field Paoli Architects and Fehr and Peers Transportation Planners. Project work would include stakeholder interviews; a visioning workshop; alternative concept plans showing possible land uses, development types, and public improvements with and without a future BART station; a design charrette; market analysis; and a final concept plan document. Economics Research Associates has national experience in evaluating the market feasibility of development projects, including retail, entertainment and attractions facilities – an important plan component to ensuring the long term viability of the Great Mall. Field Paoli Architects is strong in the area of urban design and graphic skills, which will be particularly useful during the charrette process to achieve

stakeholder and public buy-in. Fehr and Peers will provide limited services to identify any traffic and transportation flaws in the conceptual plans developed during the charrette process.

A scope of work, included in the Council's agenda packet further details the approach, tasks, deliverables, schedule and budget. The Dyett and Bhatia team would provide the services outlined in the scope on a time and materials basis at a not-to-exceed amount of \$103,070. Funds have been previously budgeted for this project.

Recommendation: Authorize the City Manager to negotiate a contract with Dyett and Bhatia, Urban and Regional Planners, to conduct community visioning and prepare concept plans for the 364-acre area around the light rail and future Montague/Capitol BART stations, referred to as the Midtown Transit Sub-area, in an amount not to exceed \$103,070, subject to approval as to form by the City Attorney.

XXII. CLAIMS AND DEMANDS

*** 21. Approve Payment Requests: Miscellaneous Vendors/Contractors (Staff Contact: Bart Damele, 586-3162)**

Background: In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$ 6,500.00 to Grade Tech, Inc., to install two undulators (speed bumps) and one asphalt concrete ramp and associated striping at the Community Center parking lot. Community Center staff requested for additional undulators along the front of the parking lot to slow down traffic and improve safety. The asphalt concrete ramp will be located between two disabled parking stalls to provide access up to the sidewalk. Grade Tech Inc. is successfully performing paving work for the City and staff considers the quote competitive and reasonable. (Funds are available from the Annual Street Resurfacing Project budget for this purchase.)
2. \$ 12,857.77 to Target Specialty Products for five mini-drums of Merit 75 WSP (water soluble packets) to be used for the annual fall soil drench for aphids. Pricing for this product is identical for each distributor due to manufacturer established agency pricing. Staff is recommending award to Target Specialty Products. (Funds are available from the Landscape Maintenance budget for this purchase.)
3. \$ 8,000.00 to Peninsula Pump for the emergency repair work at the Material Storm Pump Station. This work involved the removal, repair and reinstallation of a 77 HP pump and the replacement of seals, bearings and related parts. (Funds are available in the Utility Maintenance budget for this service)
4. \$ 27,330.00 to S & C Ford, Inc. for one Crown Victoria Police Interceptor. On September 9, 2004 Council approved an award for six Crown Victoria Police Interceptor vehicles to S & C Ford, Inc. as the low bidder. Recently, a 2001 Crown Victoria Police Interceptor was totaled in an auto accident and needs to be replaced. S & C Ford, Inc. has agreed to offer the same price as quoted on their bid for the six vehicles submitted on August 17, 2004. (Sufficient funding has been allocated in the Equipment Replacement Fund for the purchase of this patrol vehicle.)

Recommendation: Approve the purchase requests.

XXIV. ADJOURNMENT TO 6:00 P.M., TUESDAY, DECEMBER 7, 2004, FOR SWEARING IN OF NEW COUNCIL

City Council

Jose Esteves, Mayor

Patricia Dixon, Vice Mayor

Bob Livengood, Councilmember

Althea Polanski, Councilmember

Armando Gomez, Jr., Councilmember



MILPITAS CITY COUNCIL/REDEVELOPMENT AGENCY

NOTICE OF SPECIAL CLOSED SESSION MEETING

November 2, 2004

6:00 p.m.

Council Chambers, City Hall

455 E. Calaveras Blvd.

NOTICE IS HEREBY GIVEN that, pursuant to Government Code section 54956, the Mayor has called a Special Closed Session Meeting of the Milpitas City Council to be held at 6:00 p.m. on Tuesday, the 2nd day of November, 2004, 455 E. Calaveras Blvd., Milpitas, California. The meeting will be called to order in the Council Chambers and the Council will adjourn to the Council Executive Conference Room at City Hall for the purpose of holding a Closed Session:

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: Several industrial buildings at 450 S. Abbott Avenue (APN 086-06-011)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Menlo Equities

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of lease

Kathy Ynegas, Acting City Clerk

Date: November 1, 2004

CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
November 2, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

1. Conference with Legal Counsel: Existing Litigation

(Pursuant to Government Code Section 54956.9(a))

Milpitas v. Turner Construction et al., Santa Clara County Superior

Court case number CV814946, consolidated with case number 103 CV 008400

2. Conference with Real Property Negotiator

(Pursuant to Government Code Section 54956.8)

Property: Vacant Property N. Main St., south of SR237 W/B off-ramp & Main (APN 022-08-003)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

3. Conference with Real Property Negotiator

(Pursuant to Government Code Section 54956.8)

Property: 163 North Main Street, APN #022-08-041 and APN #022-08-042

Negotiating Parties: Mid-Peninsula Housing Coalition, a California

Non-Profit Public Benefit Corporation, City of Milpitas, and Milpitas Redevelopment Agency

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for disposition or lease

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES: October 19, 2004

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

Proclamations:

- Hunger and Homeless Awareness Week, November 14-20, 2004
- Veterans' Day, November 11, 2004

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

- IX. ANNOUNCEMENTS**
- X. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- XI. MOMENTS OF REFLECTION**
- XII. APPROVAL OF AGENDA**
- XIII. CONSENT CALENDAR (Items with Asterisks)**
- XIV. PUBLIC HEARINGS (None)**
- XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**
 - RA1. Call to Order by the Mayor**
 - RA2. Roll Call**
 - RA3. Approval of Minutes: October 19, 2004**
 - RA4. Approval of Agenda**
 - RA5. Progress Report on Library Design (Project No. 8162), (Staff Contact: Mark Rogge 586-3403)**
 - *RA6. City of Milpitas Investment Portfolio Status Report for the Quarter Ended September 30, 2004 (Staff Contact: Emma Karlen, 586-3145)**
 - *RA7. Adopt Joint Resolution of the City Council and the Redevelopment Agency Authorizing an Extension of the Exclusive Negotiation Agreement with Mid-Peninsula Housing Coalition until February 28, 2005, for the Sale and Development of APN 022-08-041 (163 North Main Street), (Staff Contact: Blair King, 586-3060)**
 - *RA8. Authorize an Agreement for Legal Services with Kane, Ballmer & Berkman to Draft Two Disposition and Development Agreements for KB Development and Senior Affordable Housing Project and Provide General Assistance with a Third Disposition and Development Agreement for the County Health Center with Expenditures Not to Exceed \$25,000 (Staff Contacts: Blair King, 586-3060 and Thomas Wilson, 586-3050)**
 - *RA9. Approve Lease Agreement with GTE Mobilenet of California (Staff Contact: Bill Marion, 586-2701)**
 - RA10. Agency Adjournment**
- XVI. REPORTS OF OFFICERS AND BOARDS (None)**
- XVII. UNFINISHED BUSINESS**
 - * 1. Odor Control Comprehensive Action Plan Update (Staff Contact: Darryl Wong, 586-3345)**
- XVIII. NEW BUSINESS**
 - * 2. Approve Filling Vacant Position: Executive Secretary to the City Manager (Staff Contact: Cherie Rosenquist, 586-3082).**
- XIX. ORDINANCES (None)**

XX. RESOLUTIONS

- * 3. **Adopt Resolution Granting Initial Acceptance: Silicon Valley Intelligent Transportation System (ITS) Fremont-Milpitas Project, (Project No. 4219), (Staff Contact: Greg Armendariz, 586-3401)**

XXI. BIDS AND CONTRACTS

- * 4. **Authorize the City Manager to Execute a Cost Share Agreement, Santa Clara Valley Water District: Coyote Creek Trail, Reach 1 (Project No. 4206), (Staff Contact: Greg Armendariz, 586-3401)**
- * 5. **Authorize the City Engineer to Execute Authorization Letter: Pacific Gas and Electric Company, Abel/Calaveras Right Turn Lane Project (Project No. 4186), (Staff Contact: Greg Armendariz, 586-3401)**
- * 6. **Authorize City Manager to Execute Agreement Amendment: GSS Consulting (Various CIP Projects), (Staff Contact: Greg Armendariz, 586-3401)**
- * 7. **Authorize City Manager to Execute Agreement Amendment: Montague Widening Project, HMH Engineers, (Project No. 4719), (Staff Contact: Greg Armendariz 586-3401)**
- * 8. **Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals: Athletic Court Rehabilitation (Project No. 5069), (Staff Contact: Doug De Vries, 586-3313)**

XXII. CLAIMS AND DEMANDS

- * 9. **Approve Payment Requests and Budget Change Form: Miscellaneous Vendors/Contractors (Staff Contact: Bart Damele, 586-3162)**

XXIII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, NOVEMBER 16, 2004, AT 7:00 P.M.**

**CITY OF MILPITAS
Agenda Reports
Milpitas City Council Meeting
November 2, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard**

XIV. PUBLIC HEARINGS (None)

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor

RA2. Roll Call

RA3. Approval of Minutes: October 19, 2004

RA4. Approval of Agenda

RA5. Progress Report on Library Design (Project No. 8162), (Staff Contact: Mark Rogge 586-3403)

Background: The library project is currently in the concept design phase. The project is included in the Capital Improvement Program. Staff will give a brief presentation on the progress of the design at the City Council meeting.

Recommendation: Note receipt and file the progress report on the library design.

***RA6. City of Milpitas Investment Portfolio Status Report for the Quarter Ended September 30, 2004 (Staff Contact: Emma Karlen, 586-3145)**

Background: In compliance with the State of California Government Code and the City's Investment policy, the City of Milpitas Investment Report for the quarter ended September 30, 2004, is submitted for your review and acceptance.

The Portfolio Summary Report included in the Council's packet provides a summary of the City's investments by type. It lists the par value, market value, book value, percentage of portfolio, term, days to maturity and the equivalent yields for each type of investment. The Portfolio Details Report provides the same information for each individual investment in the City's portfolio as of September 30, 2004.

As of September 30, 2004, the principal cost and market value of the City's investment portfolio was \$258,076,709.96 and \$258,281,662.46 respectively. When market interest rates increase after an investment is purchased, the market value of that investment decreases. Conversely, when market interest rates decline after an investment is purchased, the market value of that investment increases. If the investments are not sold prior to the maturity date, there is no market risk. Therefore, in accordance with the City's investment policy, all investments are held until maturity to ensure the return of all invested principal.

The City's effective rate of return for the period ended September 30, 2004 was 2.86%. The comparative benchmarks for the same period were 1.52% for LAIF (Local Agency Investment Fund) and 2.06% for the average 2 year Treasury Note. Excluding the long-term GNMA securities and Repurchase Investment Agreement, the weighted average maturity of the portfolio was 684 days.

The investment portfolio is in compliance with the City's investment policy. A combination of securities maturing, new revenues, and tax receipts will adequately cover the anticipated cash flow needs for the next six months. Cash flow requirements are continually monitored and are considered paramount in the selection of maturity dates of securities.

Recommendation: Note, receipt, and file the investment report for the quarter ended September 30, 2004.

- *RA7. Adopt Joint Resolution of the City Council and the Redevelopment Agency Authorizing an Extension of the Exclusive Negotiation Agreement with Mid-Peninsula Housing Coalition until February 28, 2005, for the Sale and Development of APN 022-08-041 (163 North Main Street), (Staff Contact: Blair King, 586-3060)**

Background: On May 18, 2004, the City Council and Redevelopment Agency jointly approved an Exclusive Negotiation Agreement with Mid-Peninsula Housing Coalition to develop a senior affordable housing project at 163 North Main Street. This Exclusive Negotiation Agreement expires on November 16, 2004. Staff recommends that the Exclusive Negotiation Agreement be extended until February 28, 2005.

Mid-Peninsula has worked diligently and cooperatively to develop an acceptable site plan that will accommodate the development of 104 affordable senior housing units and preserve and rehabilitate the DeVries/Smith House. Mid-Peninsula has paid the required deposits and met all terms of the Exclusive Negotiation Agreement. With the release of the Draft North Main Street Environmental Impact Report the project is on schedule, however, due to the City's desire to accommodate both the senior housing project and the County Health Center in a relatively compact area the development of the site plan requires more time than the current Exclusive Negotiation Agreement allows. It is anticipated that the period of exclusive negotiation will culminate with the recommendation of the adoption of a Disposition and Development Agreement.

Recommendation: Adopt a Joint Resolution of the Council of the City of Milpitas and the Milpitas Redevelopment Agency Authorizing an extension of the Exclusive Negotiation Agreement with Mid-Peninsula Housing Coalition until February 28, 2005, for the sale and development of APN 022-08-041 (163 North Main Street).

- *RA8. Authorize an Agreement for Legal Services with Kane, Ballmer & Berkman to Draft Two Disposition and Development Agreements for KB Development and Senior Affordable Housing Project and Provide General Assistance with a Third Disposition and Development Agreement for the County Health Center with Expenditures Not to Exceed \$25,000 (Staff Contacts: Blair King, 586-3060 and Thomas Wilson, 586-3050)**

Background: Professional assistance is required to draft two Disposition and Development Agreements (DDA) for the KB Development and Senior Affordable Housing Project, and general legal assistance is required to peer review the DDA for the County Health Center project. The firm of Kane, Ballmer & Berkman is recognized in the Redevelopment field for its expertise in Redevelopment and Affordable Housing law.

The KB DDA requires specific focus and attention due to the land transaction, affordable housing, and infrastructure funding elements. The Senior Affordable Housing Project requires focus and attention related to the Smith/DeVries House, timing of construction, and shared site considerations with the County. It is envisioned that Kane, Ballmer & Berkman will draft the KB and Senior Housing DDA's and provide peer review for the County Health Center DDA, which will be prepared by Meyers Nave. Meyers Nave, in turn, will provide peer review for the two DDA's drafted by Kane, Ballmer & Berkman.

Although an exact cost quote is difficult to determine at this time, it is anticipated that \$25,000 will provide an adequate amount for the entire engagement. The purchase order for services will not exceed this amount.

Recommendation: Authorize an Agreement for Legal Services with Kane, Ballmer & Berkman to draft two Disposition and Development Agreements for the KB Development and Senior Affordable Housing Project and provide general assistance with a third Disposition and Development Agreement for the County Health Center with expenditures not to exceed \$25,000.

***RA9. Approve Lease Agreement with GTE Mobilenet of California (Staff Contact: Bill Marion, 586-2701)**

Background: In April of 2004, the Milpitas City Council authorized the approval of a lease agreement with GTE Mobilenet for the location of a cellular communications site at the Milpitas Sports Center. Since the property referenced in the lease is held in the name of the Milpitas Redevelopment Agency, the City Attorney has determined that the lease agreement requires the affirmation of the Agency. There are no changes in the terms of the lease. The lease will be for an initial period of five years with options for extension. The base rent will be \$19,800 annually, which will be subject to a 3% annual adjustment over the period of the lease. These terms are comparable to those found in a survey of other jurisdictions.

Recommendation: Authorize the City Manager as the Executive Director of the Milpitas Redevelopment Agency to execute a lease agreement with GTE Mobilenet of California, subject to approval as to form by the City Attorney.

RA10. Agency Adjournment

XVI. REPORTS OF OFFICERS AND BOARDS (None)

XVII. UNFINISHED BUSINESS

*** 1. Odor Control Comprehensive Action Plan Update (Staff Contact: Darryl Wong, 586-3345)**

Background: The high summer temperatures coupled with sludge transfer activities from the Water Pollution Control Plant (WPCP) to the Browning-Ferris Industries landfill on Newby Island has resulted in high odor complaint levels in October. However, the number of complaints is still significantly lower than last year at the same time.

The WPCP continues to apply best management practices including oversight management of material transfer into trucks, and application of odor neutralizing chemicals to control odor generation. BFI has directed that any material transferred to the landfill be placed in a location remote from Milpitas. CalRecovery, the City's odor consultant, is assisting in an evaluation of the transfer activity and making recommendations for potential improvements. In addition, the Bay Area Air Quality Management District (BAAQMD) is working with both the WPCP and BFI to mitigate odors.

BAAQMD has reported the following number of complaints logged:

- October 2003: 96
- November 2003: 50
- December 2003: 17
- January 2004: 31
- February 2004: 11
- March 2004: 23
- April 2004: 22
- May 2004: 13
- June 2004: 15

- July 2004: 19
- August 2004: 29
- September 2004: 39
- October 2004: 34 (as of 10/26)

Recommendation: Note receipt and file progress report.

XVIII. NEW BUSINESS

- * **2. Approve Filling Vacant Position: Executive Secretary to the City Manager (Staff Contact: Cherie Rosenquist, 586-3082).**

Background: The Executive Secretary to the City Manager has given notice and will retire in December. The City Manager's Office is requesting that this essential position be filled to provide ongoing services to the City's administrative management and Council.

Sufficient funds are included in the fiscal year 2004-05 budget to cover salary and benefits. Staff would also request that if the vacancy were filled through an internal promotion, that the resulting vacancy be filled as well.

Recommendation: Approve filling the Executive Secretary to the City Manager position.

XIX. ORDINANCES (None)

XX. RESOLUTIONS

- * **3. Adopt Resolution Granting Initial Acceptance: Silicon Valley Intelligent Transportation System (ITS) Fremont-Milpitas Project, (Project No. 4219), (Staff Contact: Greg Armendariz, 586-3401)**

Background: This project is a grant funded multi-jurisdictional effort with Milpitas the lead construction agency installing fiber optic cable and 21 Closed Circuit TV (CCTV) cameras along the north-south corridor between Milpitas and the Fremont BART station along with installing video equipment in the Milpitas, Fremont, and San Jose Traffic Management Centers (TMC). The City Council awarded the project to VCI Telcom Inc. on August 20, 2002. The project has been substantially completed and staff recommends that Council grant a partial initial acceptance authorizing the reduction of the contractor's faithful performance bond to 10% of the contract amount or \$150,260.73.

Recommendation: Adopt resolution granting partial initial acceptance of the project subject to a one-year warranty period and reduction of the faithful performance bond to \$150,260.73.

XXI. BIDS AND CONTRACTS

- * **4. Authorize the City Manager to Execute a Cost Share Agreement, Santa Clara Valley Water District: Coyote Creek Trail, Reach 1 (Project No. 4206), (Staff Contact: Greg Armendariz, 586-3401)**

Background: Coyote Creek Trail, Reach 1 is included in the current five-year Capital Improvement Program (CIP). The completed project will provide a pedestrian and bicycle trail along Coyote Creek that extends from North McCarthy Boulevard at Coyote Creek to south of Ranch Drive. The trail will be constructed primarily on existing levees along the east side of the creek that are operated by the Santa Clara Valley Water District (District).

The width of the existing levee is typically eighteen feet, and the design width for the new trail surface is twelve feet, centered on the levee. The District has asked the City to upgrade the entire

width of the levee, beyond the trail width and raise the levee by a few inches in elevation. The District is proposing to pay for the extra levee improvements that are beyond the scope of the City's trail project. It will be more cost effective to implement all the improvements as a single contract, and result in a uniformly upgraded levee. Staff recommends that Council authorize the City Manager to execute a cost sharing agreement with the District, in order to include this work into the City's trail project and obtain cost reimbursement from the District.

The estimated cost of the District work to be added to the City's work is approximately \$60,000-\$80,000 and will be fully reimbursed by the District. A budget appropriation for the actual amount based on bids received will be submitted at time of award.

Recommendation: Authorize the City Manager to execute a cost share agreement with Santa Clara Valley Water District for Coyote Creek Trail, Reach 1, Project No. 4206, subject to approval as to form by the City Attorney.

- * **5. Authorize the City Engineer to Execute Authorization Letter: Pacific Gas and Electric Company, Abel/Calaveras Right Turn Lane Project (Project No. 4186), (Staff Contact: Greg Armendariz, 586-3401)**

Background: This project is included in the current five-year Capital Improvement Program (CIP). The completed project provides a right turn lane from northbound Abel Street to eastbound Calaveras Blvd.

Relocation and adjustment of SBC facilities within the project area is necessary. Staff has negotiated a scope and fee with PG&E for the relocation of the PG&E facilities not to exceed \$13,639.60, which is considered reasonable for the work. There are sufficient funds in the project budget(s) to cover this additional expense.

Recommendation: Authorize the City Engineer to execute Authorization Letter with Pacific Gas & Electric Company in the amount of \$13,639.60, subject to approval as to form by the City Attorney.

- * **6. Authorize City Manager to Execute Agreement Amendment: GSS Consulting (Various CIP Projects), (Staff Contact: Greg Armendariz, 586-3401)**

Background: GSS Consulting (GSS) is currently providing assistance on various capital improvement projects, including preparation of the annual CIP plan preparation and reporting, coordination with outside agencies, preparation and review of technical specifications and drawings, project management, and construction technical support. Staff recommends that GSS perform additional project management and coordination services. The proposed services will support a number of capital projects as well as environmental clearance activities and assistance on the various Midtown projects. Staff has negotiated a fee for these services not to exceed \$65,900, which is considered reasonable for the work. There are sufficient funds in the project budgets to cover this expense.

Recommendation: Authorize the City Manager to execute the agreement amendment with GSS Consulting in the amount not to exceed \$65,900, subject to approval as to form by the City Attorney.

- * **7. Authorize City Manager to Execute Agreement Amendment: Montague Widening Project, HMH Engineers (Project No. 4719), (Staff Contact: Greg Armendariz 586-3401)**

Background: HMH Engineers is currently designing Montague Expressway widening improvements from Great Mall Parkway to Highway 680.

Staff recommends that HMH Engineering perform additional services including assistance with right of way acquisition, engineering, appraisals, Coordination of the county Traffic Operation

System (TOS) design, staking, and Wrigley Creek Culvert design. Staff has negotiated a scope and fee for these services not to exceed \$116,010, which is considered reasonable for the work. There are sufficient funds in the project budget(s) to cover this additional expense.

Recommendation: Authorize the City Manager to execute the agreement amendment with HMM Engineers, in the amount of \$116,010, subject to approval as to form by the City Attorney.

* **8. Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals: Athletic Court Rehabilitation (Project No. 5069), (Staff Contact: Doug De Vries, 586-3313)**

Background: Plans and specifications for the subject project have been completed in accordance with the approved five-year Capitol Improvement Program (CIP). This project involves rehabilitation of various athletic courts located within the following Parks:

- Dixon Landing Park (3) Tennis courts and (1) Basketball court
- Hall Park (4) Tennis courts
- Pinewood Park (4) Tennis courts and (1) Basketball court
- Gill Park (3) Tennis Courts, (2) Handball Courts, (1) Basketball Court
- Yellowstone Park (4) Tennis Courts

The Engineers estimated construction cost for the work is approximately \$600,000. A copy of the project plan title sheet is included in the Council's packet. Complete plans and specifications are available for review in the office of the City Engineer. Funds are available in the project budget.

Recommendation:

1. Approve plans and specifications
2. Authorize advertising for bid proposals.

XXII. CLAIMS AND DEMANDS

* **9. Approve Payment Requests and Budget Change Form: Miscellaneous Vendors/Contractors (Staff Contact: Bart Damele, 586-3162)**

Background: In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$ 9,420.00 to Golden Bay Fence plus Iron Works Inc., to replace a portion of a fence enclosure in the vicinity of 1800 McCarthy Blvd. The fence enclosure was damaged by a vehicle driven by a private party driving at excess speed that swerved off the roadway. Four fence contractors were invited to bid and one bid was received from Golden Bay Fence plus Iron Works Inc. (Funds are available from the Landscape Maintenance operating budget for this purchase.)
2. \$ 12,981.34 to L.C. Action Police Supply to purchase eight Federal Signal Arjent LED light bars for the new police vehicles. Three bids were received ranging from \$17,199.92 to the low bid of \$ 12,981.34 received from L.C. Action Police Supply. (Funds are available from the Fleet Maintenance operating budget for this purchase.)
3. \$ 8,504.05 to HazCon to furnish and install several pump and plumbing upgrades to the fuel storage tanks at Fire Station # 1. These upgrades include installing submersible turbine pumps, remote suction pumps, new piping from pump to the fuel dispenser and a smart controller. These enhancements will reduce potential vapor system and vapor lock problems and improve fuel flow rate. (Funds are available from the Equipment Replacement Fund for this purchase.)

4. \$ 11,000.00 to Peterson Tractor for the emergency repair and replacement of several major component parts on the diesel engine at the Gibraltar Pump Station. (Funds are available from the Utility Maintenance operating budget for this service.)
5. \$ 7,500.00 to Frank Electric Co. for the emergency replacement of a burned out meter main and several component parts at the Milpitas Materials Storm Pump Station. (Funds are available from Utility Maintenance operating budget for this service.)
6. \$ 5,000 to HDL Companies for the business license SQL version software upgrade, (Funds are available in the Finance System Capital Improvement Project budget for this purchase.)
7. \$ 72,600.00 to Koffler Electrical for the emergency removal, repair and replacement of motor and pump assemblies and related parts at the Main Lift Pump Station. (Additional budget appropriation is needed from the Sewer Fund for this service.)

Recommendation: Approve the purchase requests and budget change form.

XXIII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, NOVEMBER 16, 2004, AT 7:00 P.M.**

CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
October 19, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

1. Conference with Real Property Negotiator

(Pursuant to Government Code Section 54956.8)

Property: Vacant Property N. Main St., south of SR237 W/B off-ramp & Main (APN 022-08-003)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

2. Conference with Real Property Negotiator

(Pursuant to Government Code Section 54956.8)

Property: 163 North Main Street, APN #022-08-041

Negotiating Parties: Mid-Peninsula Housing Coalition, a California

Non-Profit Public Benefit Corporation, City of Milpitas, and Milpitas Redevelopment Agency

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for disposition or lease

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES: September 21, 2004, October 5, 2004, October 6, 2004, & October 12, 2004

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

Commendation:

Relay for Life

Presentation from The Health Trust

Update regarding status of flu vaccines

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. ANNOUNCEMENT OF CONFLICT OF INTEREST

XI. MOMENTS OF REFLECTION

XII. APPROVAL OF AGENDA

XIII. CONSENT CALENDAR (Items with Asterisks)

XIV. PUBLIC HEARINGS

- 1. Approve Expenditure of 2004 Local Law Enforcement Block Grant (LLEBG) Funds (Staff Contact: Dennis Graham, 586-2502)**
- 2. Approve the Withdrawal of the Application for the USA Properties Planned Unit Development No. PD2004-1, "S" Zone Approval No. SZ2003-11 and Use Permit No. UP2003-37 for the property located at 1696 South Main Street (APN 86-34-017, -019 and -020), (Staff Contact: Staci Pereira, 586-3278)**

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor

RA2. Roll Call

RA3. Approval of Minutes: September 21, 2004, and October 5, 2004

RA4. Approval of Agenda and Consent Calendar

- *RA5. Reject bids, Approve Revised Plans and Specifications, and Authorize Readvertisement for Bids: Abel/Calaveras Right Turn Lane Project (Project No. 4186), (Staff Contact: G. Armendariz, 586-3401)**
- *RA6. Approve Budget Appropriation and Agreement Amendment: Abel Street Midtown Improvements (Project No. 8157), (Staff Contact: Greg Armendariz, 586-3401)**
- *RA7. Authorize the Executive Director to Execute a Consultant Services Agreement with Keyser Marston Associates, Inc. to Prepare Three Fair Reuse Agreements in Accordance with Health and Safety Code Section 33433 (Staff Contact: Blair King, 586-3060)**
- *RA8. Adopt Resolution of the Redevelopment Agency Authorizing the Executive Director to Execute a Purchase and Sale Agreement for 86 North Main Street and Execute a Certificate of Acceptance (Staff Contact: Blair King, 586-3060)**
- RA9. Re-Approval of Agreement with KB Homes South Bay, Inc. to Finance the Management and Design of Streetscape Improvements for Abel Street Between Corning and The Great Mall Parkway; Re-Approval of Resolutions of the Redevelopment Agency and the City Council Authorizing the Execution of a Memorandum of Understanding Between KB Homes South Bay, Inc., City of Milpitas, Milpitas Redevelopment Agency, and the County of Santa Clara to Provide Affordable Housing Related to the Elmwood Property Development (Staff Contacts: Tom Wilson, 586-3050, and Steve Mattas, 586-3040)**

RA10. Agency Adjournment

XVI. REPORTS OF OFFICERS AND BOARDS

City Council

3. Update – Police Chief Lawson – Regarding September 30th *POST* Article and Chief Lawson’s Referral to District Attorney’s Office: Mayor Jose Esteves

Arts Commission

4. Approve Public Arts Policy Concept (Staff Contact: Tom Wilson, 586-3050)

Parks, Recreation, and Cultural Resources Commission

- * 5. Approve Two Individual and Two Organizational Youth Sports Assistance Fund Grant Requests (Staff Contact: Kerrilyn Ely, 586-3231)

XVII. UNFINISHED BUSINESS (None)

XVIII. NEW BUSINESS

6. Approve Conceptual Streetscape Designs for Main and Abel Street (Staff Contact: James Lindsay, 586-3274)
- * 7. Approve Distribution Proposal for City History Book, (Staff Contact: Cindy Maxwell, 586-3282)
- * 8. Approve Hiring and Funding of a Temporary Associate Planner (Staff Contact: Tambri Heyden, 586-3280)

XIX. ORDINANCES

9. Adopt Urgency Ordinance No. 38.764 Imposing a Temporary Moratorium on Approval of Land Use Permits and Building Permits for Quasi-Public Uses in All Industrial Zoning Districts (Staff Contact: James Lindsay, 586-3274)
- * 10. Adopt Ordinance Designating Employee Salary and Total Compensation Information by Job Title as a Public Record (Staff Contact: Steve Mattas, 586-3040)

XX. RESOLUTIONS

- * 11. Adopt Resolution to Amend the Planning Commission Bylaws (Staff Contact: James Lindsay, 586-3274)
- * 12. Adopt Resolution Extending the Date to Complete Utility Removals, North Main Street, Weller Lane, and Winsor Avenue Underground Utility District No. 5 (Staff Contact: Mark Rogge, 586-3403)
- * 13. Adopt Resolution Granting Final Acceptance: Montague Expressway Widening and Signal Work Project (Project No: 4180), (Staff Contact: Steve Erickson: 586-3414)
- * 14. Adopt Resolution Granting Final Acceptance: Curtis Park Well Upgrade Project, Phase 1, (Project No. 7076), (Staff Contact: Steve Erickson, 586-3414)

XXI. BIDS AND CONTRACTS

- * 15. Approve an Amendment to the Consulting Services Agreement with LSA Associates, Inc. for the Senior Housing and County Health Center EIR, (Staff Contact: Dennis Carrington, 586-3275)

- * 16. Approve Purchase of Anti-Virus Software Update (Staff Contact: Bill Marion, 586-2701)

XXII. CLAIMS AND DEMANDS

- * 17. Approve Payment Requests: Miscellaneous Vendors/Contractors (Staff Contact: Lou Zenzen, 586-3161)

XXIII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, NOVEMBER 2, 2004, AT 7:00 P.M.**

Remember to Vote November 2nd!

CITY OF MILPITAS
Agenda Reports
Milpitas City Council Meeting
October 19, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

XIV. PUBLIC HEARINGS

1. Approve Expenditure of 2004 Local Law Enforcement Block Grant (LLEBG) Funds (Staff Contact: Dennis Graham, 586-2502)

Background: Since 1996, the U.S. Department of Justice's Bureau of Justice Assistance has been awarding law enforcement agencies block grant funds based on population. In July of 2004 the Bureau of Justice Assistance awarded \$18,079 to the Milpitas Police Department. The City is required to match \$1,557.

LLEBG Program funds must be spent in accordance with one or more of several areas. They include supporting law enforcement for hiring and training officers, multi-jurisdictional task forces to prevent and control crimes, and procuring equipment. Pursuant to the terms of this federal grant, these funds will supplement and not supplant police services and must be considered separate and apart from the process applicable to proposed allocations of the City general fund.

Police staff has committed \$4,068 to support local agency sharing to finance two investigators for the Santa Clara County District Attorney's Sexual Assault Felony Enforcement Team. The remaining \$15,568 is dedicated to purchase: An anti-graffiti camera to reduce incidents of vandalism; an evidentiary Intoximeter to gather court-worthy DUI samples in the field; WRAP devices to restrain combative arrestees; upgraded digital cameras and software; training batons and OC canisters; Stop Sticks to safely terminate vehicle pursuits; and K-9 sleeves for training and demonstrations.

A five-member advisory board comprised of representatives from a local law enforcement agency, local prosecutor's office, local court system, local public school and local non-profit group has approved this recommendation pursuant to grant conditions.

Recommendation:

1. Close Public Hearing.
2. Approve expenditures as recommended.

2. Approve the Withdrawal of the Application for the USA Properties Planned Unit Development No. PD2004-1, "S" Zone Approval No. SZ2003-11 and Use Permit No. UP2003-37 for the property located at 1696 South Main Street (APN 86-34-017, -019 and -020), (Staff Contact: Staci Pereira, 586-3278)

Background: At the request of the applicant, this application was continued at the October 5, 2004, City Council meeting to October 19, 2004. Staff received a letter from the applicant on October 8, 2004, withdrawing the application. The applicant has stated they were unable to come to an agreement with the City on their request for financial assistance. The applicant will be redesigning his site plan and re-evaluating his product type against the Milpitas market.

Recommendation:

1. Close the public hearing.
2. Withdraw the Planned Unit Development No. PD2004-1, "S" Zone Approval No. SZ2003-11 and Use Permit No. UP2003-37 from the agenda.

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor

RA2. Roll Call

RA3. Approval of Minutes: September 21, 2004 and October 5, 2004

RA4. Approval of Agenda and Consent Calendar

***RA5. Reject bids, Approve Revised Plans and Specifications, and Authorize Readvertisement for Bids: Abel/Calaveras Right Turn Lane Project (Project No. 4186), (Staff Contact: Greg Armendariz, 586-3401)**

Background: On June 15, 2004, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals. This project provides a right turn lane from northbound Abel Street to eastbound Calaveras Blvd. with modifications to the Carlo Street intersection, including the closure of eastbound Carlo Street. The project was advertised and sealed bid proposals were opened on September 13, 2004.

New requirements by Caltrans have significantly changed the characteristics of the project. A staff memorandum providing more detail is included in the council agenda packet. Due to these requirements, staff recommends that all bids be rejected, Council approve revised plans and specifications, and the project be readvertised. These Caltrans requirements are expected to increase construction costs significantly; therefore, a budget appropriation may be necessary at the time of project award.

Recommendation: Reject bids, approve revised plans and specifications, and authorize readvertisement.

***RA6. Approve Budget Appropriation and Agreement Amendment: Abel Street Midtown Improvements (Project No. 8157), (Staff Contact: Greg Armendariz, 586-3301)**

Background: On March 25, 2004, the City Council awarded a consultant contract to JMH Weiss, Inc. to provide base mapping and design of street improvements on Abel Street from Weller lane to Great Mall Parkway, in conformance with the Midtown Specific Plan. Staff now recommends that JMH Weiss perform the following additional services:

1. Prepare an overall underground utility master plan for the entire Milpitas Midtown area, encompassing all projects to determine, plan, and coordinate for future utility needs. The plan will assist in the coordination with the Utility Companies by documenting current and future Midtown projects to facilitate planning of future infrastructure improvements.
2. Prepare an urban concept landscaping design plan along the creek edge of the Elmwood Correctional facility.
3. Provide a boundary, topographic, and utility survey of Curtis Avenue.
4. Provide design plans and specifications for sanitary sewer improvements on Curtis Avenue and Abel Street.
5. Provide videotaping and inspection of the sanitary sewer and storm drain mainlines with Abel Street from Weller Lane to Great Mall Parkway to verify the integrity of the pipelines and to determine the extent of required improvements.
6. Prepare design plans and specifications for the installation of an Opticom Interconnect System all the intersections along Abel Street. These improvements will provide traffic signal pre-emption for emergency vehicle traffic controls.
7. Conduct additional traffic counts and traffic analysis of selected intersections and business driveways along Abel Street.

Staff has negotiated a fee for these additional design services not to exceed \$150,000, which is considered reasonable for the work. In addition, staff recommends an additional \$250,000 to be appropriated for project management, administration, design coordination, plan and specification reviews, value engineering, budget tracking, bidding assistance, and construction administration, provided by Swinerton Mgmt & Consulting and staff.

Funding shall be provided as set forth in the Exclusive Negotiating Rights Agreement among the County of Santa Clara, the City of Milpitas, and the Milpitas Redevelopment Agency, adopted by the City of Milpitas, June 3, 2003, through Resolution No. 7313 and as set forth in Article 9 of the Agreement for Purchase and Sale of Real Property between the County of Santa Clara and KB Homes Southbay, Inc., adopted August 19, 2004.

Recommendation:

1. Approve budget appropriation in the amount of \$400,000.
2. Authorize the City Manager to execute an agreement amendment with JMH Weiss, based on time and materials not to exceed \$150,000, subject to approval as to form by the City Attorney.

***RA7. Authorize the Executive Director to Execute a Consultant Services Agreement with Keyser Marston Associates, Inc. to Prepare Three Fair Reuse Agreements in Accordance with Health and Safety Code Section 33433 (Staff Contact: Blair King, 586-3060)**

Background: The Redevelopment Agency has taken action to offer for sale and development various properties owned by, or to be owned by, the Redevelopment Agency. In accordance with Health and Safety Code Section 33433, the Agency must prepare a report referred to as the "Fair Reuse Report" that contains required specific information regarding the economics of the transaction prior to the Agency's consideration of a Disposition and Development Agreement. The reports must be available for public review no later than two weeks prior to a Public Hearing considering the disposition of property acquired with tax increment moneys

Agency staff is proposing that the consultant firm of Keyser Marston Associates of San Francisco be retained to prepare three Fair Reuse Reports. The Fair Reuse Reports are needed for the KB Homes transaction, the County Health Center Project, and the Senior Housing Project. Negotiations are currently underway with Keyser Marston with regard to their fee proposal. The proposed cost for the engagement will be forwarded to the Agency Board prior the Council Meeting.

Recommendation: Authorize the Executive Director to enter into a Consultant Services Agreement with Keyser Marston Associates to prepare three Fair Reuse Reports.

***RA8. Adopt Resolution of the Redevelopment Agency Authorizing the Executive Director to Execute a Purchase and Sale Agreement for 86 North Main Street and Execute a Certificate of Acceptance (Staff Contact: Blair King, 586-3060)**

Background: Pursuant to Board authorization, staff has negotiated a Purchase and Sale Agreement with Juan and Rose Rodriguez to acquire 86 North Main Street, also identified as APN number 028-24-025, for a purchase price of \$400,000. The 6,180 s.f. site is one of several parcels required to construct the parking structure adjacent to the Milpitas library project. Board action is required to formally authorize the execution of a purchase and sale agreement and certificate of acceptance.

Recommendation: Adopt a Resolution of the Redevelopment Agency Authorizing the Executive Director to execute a Purchase and Sale Agreement for 86 North Main Street and execute a Certificate of Acceptance.

RA9. Re-Approval of Agreement with KB Homes South Bay, Inc., to Finance the Management and Design of Streetscape Improvements for Abel Street Between Corning and The Great

Mall Parkway; Re-Approval of Resolutions of the Redevelopment Agency and the City Council Authorizing the Execution of a Memorandum of Understanding Between KB Homes South Bay, Inc., City of Milpitas, Milpitas Redevelopment Agency, and the County of Santa Clara to Provide Affordable Housing Related to the Elmwood Property Development (Staff Contacts: Tom Wilson, 586-3050, and Steve Mattas, 586-3040)

Background: Pursuant to direction of the City Council, the two agreements identified herein, are being submitted to the Council for re-approval. The first agreement is an agreement between KB Homes South Bay, Inc. and the City of Milpitas to finance management and design costs associated with streetscape improvements. This agreement was originally approved by the City Council on February 17, 2004. The second agreement is a memorandum of understanding related to the provision of affordable housing provided as part of the proposed KB Homes South Bay development of property at the Elmwood site and the related development of senior housing by Mid-Peninsula Housing Coalition on property owned by the RDA on North Main Street near the DeVries house. This MOU was originally approved by the City Council on May 18, 2004.

The re-approval action requested as part of the staff report is to ensure the validity of those agreements under Government Code section 1090.

The agreement between the City of Milpitas and KB Homes South Bay related to the streetscape improvements includes the provisions to fund design studies necessary for public improvements that KB Homes will be required as a condition of approval of the Elmwood project to design and construct. The improvements include roadway and streetscape improvements on both sides of Abel Street between Corning Avenue and Great Mall Parkway. This agreement is designed to ensure the coordinated completion of these improvements along with other associated public improvements in the area. KB Homes has agreed to pay \$120,000 for project management services provided by the City's consultant related to Abel Street, and \$275,000 for the preparation of actual construction plans and specifications. The City would engage the services of a project management consultant as needed to manage, coordinate, and oversee the design and construction of the various Abel Street improvement projects.

The MOU is among the RDA, the City, KB Homes South Bay, Inc., and the County of Santa Clara. It details the provisions for providing affordable housing for the KB Elmwood development. In brief, the MOU requires the development of 110 deed-restricted, moderate-income home ownership units (85 condominium units, 15 townhomes, and 10 single family detached units) and a contribution of \$6 million (\$5 million by KB Homes and \$1 million by the County) towards the development on Agency property of a 98-unit, low-income senior housing project proposed for North Main Street. This MOU will result in the development of 208 affordable units, allowing the project to achieve an approximate 30% affordability factor. The \$6 million contribution, plus the Agency's reserved senior housing funds from its 1997 Tax Allocation Bond, and financial resources to be contributed from the Agency's non-profit housing developer partner, make the development of the senior affordable apartments financial feasible.

Recommendation: The City Council and, as appropriate, the Milpitas Redevelopment Agency, re-approve and reaffirm the agreement between KB Homes South Bay, Inc., and the City of Milpitas related to financing of design costs for streetscape improvements for Abel Street between Corning and Great Mall Parkway and that the City Council and Milpitas Redevelopment Agency re-approve and reaffirm the Memorandum of Understanding among the Milpitas Redevelopment Agency, the City of Milpitas, the County of Santa Clara, and KB Homes South Bay, Inc., related to the provision of affordable housing as part of the KB Homes South Bay development on the Elmwood property.

RA10. Agency Adjournment

XVI. REPORTS OF OFFICERS AND BOARDS

City Council

3. Update – Police Chief Lawson – Regarding September 30th POST Article and Chief Lawson’s Referral to District Attorney’s Office: Mayor Jose Esteves

Background: Update from Chief Lawson’s office on referral to District Attorney regarding possible voting violation of employee.

Recommendation: Note, receipt, and file.

Arts Commission

4. Approve Public Arts Policy Concept (Staff Contact: Tom Wilson, 586-3050)

Background: On August 17, 2004, the City Council approved the recommendation of the Arts Commission to develop a Public Arts Policy for Milpitas. The policy would annually dedicate at least 1% of the cost of the City’s large Capital Improvement Projects for the acquisition and installation of public art throughout Milpitas. The Council discussed the item at length and directed the Arts Commission to develop a draft policy for further review.

On September 27, 2004, the Arts Commission unanimously recommended a draft Public Arts Policy with the following major elements:

- Dedicate 1.5% of the City’s gross annual Capital Improvement Project budget to the acquisition and installation of visual Public Artworks.
- A significant initial fund for Public Artworks would be established for the first four program years by The City and Redevelopment Agency.
- The Arts Commission will aggressively seek additional outside funding.
- Develop a Public Arts Program Master Plan that will identify projects and provide ongoing maintenance.
- Create a Public Arts Committee to advise the City Council and Redevelopment Agency on the selection and placement of Public Artworks.

The draft Public Arts Policy is included with the Council’s agenda packet.

Recommendation: Approve the Draft Milpitas Public Arts Policy.

Parks, Recreation, and Cultural Resources Commission

*** 5. Approve Two Individual and Two Organizational Youth Sports Assistance Fund Grant Requests (Staff Contact: Kerrilyn Ely, 586-3231)**

Background: On June 15, 2004, the Milpitas City Council approved and appropriated \$8,000 for the Youth Sports Assistance Fund for fiscal year 2004-05. Included in the Council agenda packet for review and consideration are two Individual and two Group Youth Sports Assistance Fund applications.

One Individual Youth Sports Assistance Fund Application was received from Nastassia A. Hamor, requesting \$500.00 to offset cost of representing the United States in the Outdoor In-line Skating competition “Trophees Des Pes 3 Pistes” in France on March 3-5, 2005.

One Individual Youth Sports Assistance Fund Application was received from Randy Zappia, requesting \$150.00 to offset cost of competing in the “Blackjack National” BMX racing competition held in Reno, Nevada on September 3- 5, 2004.

These applications fall within the grant guidelines, under section, “Funding consideration will be given,” item #4 states; “As an event occurring where additional funding is required for a special event where participants are advancing beyond the normal spectrum of league play, hence additional expenses.”

One Organizational Youth Sports Assistance Fund Application was received from Milpitas PAL Soccer, requesting \$ 1,000.00 to offset the cost of purchasing field stripping equipment and seasonal paint supplies used during games and practice on city fields.

One Organizational Youth Sports Assistance Fund Application was received from Southpawprep, requesting \$ 980.00 to offset the cost of purchasing video equipment to tape player and team skills, practices and games.

These organizational applicants meet the eligibility for the grant process. Staff has reviewed the items requested and has found that the requested items meet the grant guidelines, under the section, “Funding consideration will be given,” item #3 states; “To one time activities or capital equipment purchases designed to address a need or problem which organization cannot routinely finance”.

The Parks, Recreation and Cultural Resources Commission reviewed individual and organizational applications on October 4, 2004, and recommended Council approval of the two Individual Youth Sports Grants of \$500.00 to Nastassia A. Hamor and \$150.00 to Randy Zappia and two organizational requests of \$1,000.00 to Milpitas PAL Soccer and \$980.00 to Southpawprep.

There is currently a balance of \$3,500.00 in the 2004-2005 Youth Sports Assistance Fund.

Recommendation: Approve two individual Youth Sports Grants of \$500.00 to Nastassia A. Hamor and \$150.00 to Randy Zappia and two organizational requests of \$1,000.00 to Milpitas PAL Soccer and \$980.00 to Southpawprep.

XVII. UNFINISHED BUSINESS (None)

XVIII. NEW BUSINESS

6. Approve Conceptual Streetscape Designs for Main and Abel Street (Staff Contact: James Lindsay, 586-3274)

Background: Since the adoption of the Midtown Specific Plan in March 2002, the City has been working on implementing the policies set forth in the plan. One of the major work efforts has been the new streetscape designs from Main and Abel Street. Provided in the Council agenda packet are proposed enhancements to the landscaping, sidewalks, street furniture and lighting for Main Street between Railroad Court and Curtis Avenue and for Abel Street between Weller Lane and Great Mall Parkway. These enhancements are conceptual designs. If approved, the conceptual designs for Abel Street will be developed into final designs that are expected to return for Council approval in Spring 2005. Construction plans will then be prepared in time to allow planting and installation of Abel Street concurrent with construction of the KB Homes development. Until funding is in place, no further design development of the Main Street conceptual plans will occur for any segment other than North Main adjacent to the future library, senior center and county health clinic.

Staff conducted a meeting on August 18, 2004, for the businesses and property owners along Main and Abel Street to receive comments on the designs. The attendees were pleased with the designs, but did express concern about the timing of the improvements, impacts to businesses during construction, and cost of installation and maintenance.

The Planning Commission reviewed the plans at their August 25, 2004, and October 13, 2004, meetings. The Commission's recommendation will be presented to the Council during staff's presentation. Several business and shopping center owners who were concerned about the raised median proposed for Abel Street attended the August 25, 2004, Planning Commission meeting and submitted letters. They were concerned about the future loss of access to their centers due to the raised median. The primary concern was the entrance to the Serra Center at Abel Street. Staff conducted additional traffic studies and modified the median design to retain all current turning movements at this location.

Recommendation: Approve the conceptual streetscape designs for Main and Abel Street.

* 7. **Approve Distribution Proposal for City History Book, (Staff Contact: Cindy Maxwell, 586-3282)**

Background: Mr. Mort Levine, an author of the City's history book, *Milpitas, Five Dynamic Decades*, requests that the book be distributed to individuals and organizations involved in historic preservation throughout the County. Mr. Levine indicates his request is the result of recent discussion and suggestions from the County Historic Heritage Commission. He recommends the distribution as an investment by the City in public perception to increase regional interest and awareness in Milpitas. Mr. Levine's proposed distribution includes media representatives, elected officials, historic preservation groups, and the leadership of major local corporations.

Based on Mr. Levine's proposal, staff prepared a detailed distribution of 145 books. The proposed list is included as an attachment to the agenda and the books would be distributed with a cover letter from the City Council. There would be no direct costs to the City though there would be a corresponding decrease in revenue from book sales. Currently, there is an inventory of 645 books and 77 complimentary copies were previously distributed in January 2004.

Recommendation: Approve the proposed distribution of *Milpitas, Five Dynamic Decades*.

* 8. **Approve Hiring and Funding of a Temporary Associate Planner (Staff Contact: Tambri Heyden, 586-3280)**

Background: On September 10, 2004, the Planning and Neighborhood Services Department released an RFQ (Request for Qualifications) to solicit a team of consultants to prepare a Midtown Transit Sub-Area Plan. The study area is comprised of the 337 acres surrounding the future Montague/Capitol BART station and two existing light rail stations. This project was identified in the department's budget objectives for FY 04-05. Starting the end of October, staff will be developing a scope of work and contract that will be brought to Council in January for consultant selection. The first six months of the transit sub-area plan process will be intensive to complete community visioning for the area around the stations and the design of the BART station. This work needs to track and be coordinated with VTA's work on preparation of an amendment to the BART EIR.

In addition, activity from planning approval to building permit review has swung into full gear in the Midtown area. Momentum continues to increase beyond the housing unit numbers projected for this period of time in the Midtown Plan implementation program. Given the level of experience required to manage the Transit Sub-Area Plan, a staffing shortage will be created making it difficult to appropriately review and process upcoming, anticipated development applications. Such development applications include conversion of the Apton Plaza project from

apartments to condominiums, Barry Swenson's twin towers condominium development at the former Minton Lumber site, USA Properties' townhouse project, the Fairfield apartments on the George Abel site, and the North Main EIR and entitlements involving the library, senior center and County health center. To help handle this workload and offset the two, frozen associate planner positions in the Planning Division, hiring of a benefited, temporary associate planner is requested from December 2004 to June 2005. To fund this temporary hire, an additional appropriation to the Planning and Neighborhood Services budget would be needed from the General Fund reserve balance in the amount of \$63,300.

Recommendation: Approve the hiring and funding of a temporary associate planner with an additional appropriation from the General Fund reserve balance in the amount of \$63,300.

XVIII. ORDINANCES

9. Adopt Urgency Ordinance No. 38.764 Imposing a Temporary Moratorium on Approval of Land Use Permits and Building Permits for Quasi-Public Uses in All Industrial Zoning Districts (Staff Contact James Lindsay, 586-3274)

Background: The City is continuing to receive new applications for quasi-public uses in the industrial zoning districts due to the high vacancies and reduced rents that occur in these areas since the economic downturn is heavily affecting the current demand for industrial space. A quasi-public use is defined in the zoning ordinance as:

"A use operated by a non-profit educational, religious, recreational, charitable, or medical institution, and having the purpose primarily of serving the general public. Such uses include churches, private schools, community, youth and senior citizen recreational facilities, private hospitals, government facilities, and the like."

Staff has concerns with the loss of industrial space that would no longer be available for industrial, R&D and manufacturing uses when the industrial market turns around. There is also a concern that the character of business parks that have a concentration of these uses would change, and could present land use compatibility concerns that would cause the areas to no longer be attractive to some businesses. This temporary moratorium would allow the City time to study this issue and prepare any necessary ordinance amendments.

This urgency ordinance would become effective immediately upon adoption by at least a four-fifths vote of the City Council and would be in effect initially for the maximum 45-day period allowed by State law. If the ordinance is adopted, a public hearing could be agendized for the Council meeting of November 19, 2004, in order to extend the ordinance for up to 10 months and 15 days. If at the November 19, 2004, meeting, the City Council elects not to extend the ordinance, State law required the Council to issue a report describing the measures taken to alleviate the conditions that led to the adoption of the ordinance.

Recommendation: Waive reading beyond the title. Adopt the urgency ordinance imposing a temporary moratorium on approval of land use permits and building permits for new quasi-public uses in all industrial zoning districts.

*** 10. Adopt Ordinance No. 266 Designating Employee Salary and Total Compensation Information by Job Title as a Public Record (Staff Contact: Steve Mattas, 586-3040)**

Background: At the City Council meeting of September 14, 2004, the City Council provided the City Attorney with direction to draft a "sunshine" type ordinance identifying employee salary and total compensation information by job title as a public record. The City Council also directed that we review relevant MOU and Personnel Rule provisions and provide the draft ordinance to employee groups for their comment. The proposed ordinance has been provided to the employee group representatives, and they have not requested any changes.

This ordinance included in the Council's agenda packets would require public disclosure of gross earnings by job title, including base salaries and other compensation. Other compensation includes allowances, overtime, deferred compensation, leave cash out payments, and the percentage of base salaries that the City pays as the employer's CalPERS contribution. At your prior meeting, the City Council introduced Ordinance No. 266.

Recommendation:

1. Waive full reading of the ordinance; and
2. Adopt Ordinance No. 266.

XIX. RESOLUTIONS

- * **11. Adopt Resolution to Amend the Planning Commission Bylaws (Staff Contact: James Lindsay, 586-3274)**

Background: The Planning Commission Bylaws set the Planning Commission's regular meeting schedule as the 2nd and 4th Wednesday of each month. Section 7.02 of the bylaws limits the Commission to review only non-legislative matters for meetings that fall outside the regular meeting schedule. Legislative matters include any actions related to the general plan, specific plan, or zoning ordinance. Situations may arise where the Commission may wish to reschedule a meeting or hold an additional meeting on a day that is not considered a regular meeting date. The Planning Commission is requesting Section 7.02 be modified to provide more flexibility in the items it considers during meetings conducted outside the regular meeting schedule. The draft resolution and the modified bylaws have been included in the Council's agenda packet.

Recommendation: Adopt resolution amending the Planning Commission's bylaws.

- * **12. Adopt a Resolution Extending the Date to Complete Utility Removals, North Main Street, Weller Lane, and Winsor Avenue Underground Utility District No. 5 (Staff Contact: Mark Rogge, 586-3403)**

Background: On November 18, 2003, the City Council held a Public Hearing and adopted a Resolution establishing Underground Utility District No. 5 for North Main Street, Weller Lane, and Winsor Avenue. This will allow for the removal of overhead power wires, poles, and telecommunications equipment in preparation of the Main Street streetscape improvements, construction of the new library, parking garage, and other developments. The adopted Resolution specified November 8, 2004, as the date which utility companies must have completed the overhead wire and pole removal, unless Council extends the time for such work.

Staff has been coordinating and meeting with the utility companies to assist in the development of its underground equipment designs to include provisions for expansion to meet the needs of the new library, garage, senior housing, and health clinic projects on Main Street. Staff is also developing a utility master plan for use by the utility companies that will provide details of the future utility needs for the entire Midtown area including Abel Street.

Due to the size and complexity of the utility undergrounding work on Main, Weller, and Winsor, staff recommends the Council extend the date for completion of the work to December 1, 2005.

Recommendation: Adopt a Resolution extending the time provided for completion of the utility underground work as specified in Resolution No. 7362 to December 1, 2005.

- * **13. Adopt Resolution Granting Final Acceptance: Montague Expressway Widening and Signal Work Project (Project No. 4180), (Staff Contact: Steve Erickson: 586-3414)**

Background: This project provided an additional lane in the eastbound direction of Montague Expressway, extended the existing double box culvert at Berryessa Creek and relocated the traffic signals, and was initially accepted by City Council on September 16, 2003. The one-year project

warranty period has passed. Staff conducted a final project inspection and has determined the work to be satisfactory. Therefore, the Council may grant final acceptance and the contractor's bond may be released.

Recommendation: Adopt resolution granting final acceptance and release of the Contractors bond.

- * 14. **Adopt Resolution Granting Final Acceptance: Curtis Park Well Upgrade Project, Phase 1, (Project No. 7076), (Staff Contact: Steve Erickson, 586-3414)**

Background: This project provided for the construction, development and testing of a water supply well, and was initially accepted by City Council on October 21, 2003. The one-year project warranty period has passed. Staff conducted a final project inspection and has determined the work to be satisfactory. Therefore, the Council may grant final acceptance and the contractor's bond may be released.

Recommendation: Adopt resolution granting final acceptance and release of the Contractors bond.

XX. BIDS AND CONTRACTS

- * 15. **Approve an Amendment to the Consulting Services Agreement with LSA Associates, Inc. for the Senior Housing and County Health Center EIR, (Staff Contact: Dennis Carrington, 586-3275)**

Background: The City Council authorized the City Manager to enter into a consulting services agreement with LSA Associates, Inc. in the amount not to exceed \$135,000. The contract was entered into and work began on the project. Following approval of the contract, the project description was expanded by the City to include properties on the east side of North Main Street. Analysis of the east side led to a parking structure, some retail development, and a variety of circulation and streetscape improvements for the proposed library. These changes have resulted in increases in the level of effort required to complete each line item in LSA's original contracted budget estimate. The most significant increases resulted from the following items: (1) development of an adequate project description, (2) the requirement to analyze the project's impacts on three additional potentially significant historic structures; and (3) the need to expand the scope of work for the transportation, noise and air quality analyses.

The revised consultant agreement would result in an additional cost of \$59,132 and would increase the not to exceed amount from \$135,000 to \$193,507 which the Planning and Neighborhood Services Department believes will be sufficient to complete the expanded project to the City's satisfaction.

Funding for the revised LSA contract would be from Capital Project No. 8103 – Senior Housing Project.

Recommendation: Approve the amendment to the consulting services agreement with LSA Associates, Inc. to increase the not to exceed amount from \$135,000 to \$193,507, subject to approval as to form by the City Attorney.

- * 16. **Approve Purchase of Anti-Virus Software Update (Staff Contact: Bill Marion, 586-2701)**

Background: In 2000, the City implemented an enterprise-wide anti-virus solution to protect desktop computers, file servers, the email system and other devices from harmful computer viruses. The licensing for this product will expire in November of 2004 and the purchase of a software update is required in order to continue receiving anti-virus product support. A quotation for the software update in an amount of \$14,131.22 plus tax was obtained from GE IT Solutions,

a California Multiple Award Schedule (CMAS) vendor. Funding for this purchase is included in CIP 8109 (Desktop Technology).

Recommendation: Approve the purchase of anti-virus software in an amount not to exceed \$15,297.05

XXII. CLAIMS AND DEMANDS

*** 17. Approve Payment Requests: Miscellaneous Vendors/Contractors (Staff Contact: Lou Zenzen, 586-3161)**

Background: In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$13,834.00 to Sutphen Corporation for the emergency yoke (platform support) replacement on fire engine # 3 aerial tower. (Funds are available from the Fleet Maintenance operating budget for this purchase.)
2. \$7,983.00 to Republic Electric for the emergency replacement of traffic signal pole at the Southwest corner of McCarthy Blvd. and Bellew Drive due to crack at bottom of pole. (Funds are available from the Street Maintenance repair and maintenance budget for this purchase)
3. \$10, 777.13 to Western Pacific Signal, LLC to purchase an automated conflict monitor tester. This unit is required for testing and certification of traffic signal components. Two quotes were received from authorized distributors for this product and Western Pacific, LLC provided the lowest bid. (Funds are available from Traffic Signal Modification Capital Improvement Project budget (Project No. 4167) for this purchase).
4. \$5,459.59 to Target Specialty Products to purchase 2,750 lbs of selective herbicide for the annual fall pre-emergent program. (Funds are available from Landscape Maintenance operating budget for this purchase.
5. \$12,500.00 to Tecogen Natural Gas for annual preventive maintenance service, conducted quarterly, for the co-generation system at the Sports Center for the Recreation Services Division. (Funds are available from the Recreation Services operating budget for this service)
6. \$7,000.00 to US Power, Inc. for annual service agreement for scheduled and remedial maintenance service for the UPS (Uninterruptible Power Supply) system that supports Police, Information Systems, and Public Works Departments. Three quotes were solicited and US Power submitted the most competitive quote. (Funds are available from the Public Works operating budget for this service).

Recommendation: Approve the purchase requests.

XXIII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, NOVEMBER 2, 2004, AT 7:00 P.M.**

Remember to Vote November 2nd!

City Council

Jose Esteves, Mayor

Patricia Dixon, Vice Mayor

Bob Livengood, Councilmember

Althea Polanski, Councilmember

Armando Gomez, Councilmember



AGENDA

SPECIAL CITY COUNCIL MEETING

October 12, 2004

6:00 p.m.

**Council Chambers, City Hall
455 E. Calaveras Blvd.**

I. ROLL CALL & PLEDGE OF ALLEGIANCE

II. CITIZENS FORUM

Please limit remarks to two minutes.

III. APPROVAL OF AGENDA

IV. ADJOURN TO CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

[Pursuant to Government Code Section 54956.9(b)(1) & (2)]

Significant Exposure to Litigation: One case

V. REPORTS OF OFFICERS AND BOARDS

City Council

Report on review of potential conflict of interest issue (Staff Contact: Steve Mattas, 586-3040)

VI. ADJOURNMENT

City of Milpitas, 455 E. Calaveras Blvd, Milpitas, CA 95035, Phone: 408/586-3000

*Individuals requiring accommodations for this meeting should notify the City Clerk 48 hours prior to the meeting
408/586-3001, TDD 408/586-3013*

Hearing assistance devices are available for use in the Council Chambers

City Council

Jose Esteves, Mayor

Patricia Dixon, Vice Mayor

Bob Livengood, Councilmember

Althea Polanski, Councilmember

Armando Gomez, Councilmember



MILPITAS CITY COUNCIL

NOTICE OF SPECIAL MEETING

October 6, 2004

6:30 P.M.

Council Chambers, City Hall

455 E. Calaveras Blvd.

NOTICE IS HEREBY GIVEN that pursuant to Government Code section 54956, the Mayor and City Council have called a Special Meeting of the Milpitas City Council to be held at 6:30 p.m. on Wednesday, the 6th day of October, 2004, in the Council Chambers, 455 E. Calaveras Blvd., Milpitas, California. The purpose of the meeting is as follows:

**To participate in a training workshop on
Role Modeling, Decision-Making, and the Code of Ethics**

Kathy Ynegas
Acting City Clerk

Date: October 1, 2004

City of Milpitas, 455 E. Calaveras Blvd, Milpitas, CA 95035, Phone: 408/586-3000

*Individuals requiring accommodations for this meeting should notify the City Clerk 48 hours prior to the meeting
408/586-3001, TDD 408/586-301.*

Hearing assistance devices are available for use in the Council Chambers

City Council

Jose Esteves, Mayor

Patricia Dixon, Vice Mayor

Bob Livengood, Councilmember

Althea Polanski, Councilmember

Armando Gomez, Councilmember



AGENDA

SPECIAL CITY COUNCIL MEETING

**October 6, 2004
6:30 p.m.**

**Council Chambers, City Hall
455 E. Calaveras Blvd.**

I. ROLL CALL & PLEDGE OF ALLEGIANCE

II. CITIZENS FORUM

Please limit remarks to two minutes.

III. APPROVAL OF AGENDA

IV. MILPITAS ETHICS PROGRAM: FOSTERING PUBLIC TRUST 2

The City Council will participate in a Workshop on Role Modeling, Decision-Making, and the Code of Ethics led by Dr. Thomas Shanks, Associate Professor of Communication, Santa Clara University.

VI. ADJOURNMENT

City of Milpitas, 455 E. Calaveras Blvd, Milpitas, CA 95035, Phone: 408/586-3000

*Individuals requiring accommodations for this meeting should notify the City Clerk 48 hours prior to the meeting
408/586-3001, TDD 408/586-3013.*

Hearing assistance devices are available for use in the Council Chambers

City Council

Jose Esteves, Mayor

Patricia Dixon, Vice Mayor

Bob Livengood, Councilmember

Althea Polanski, Councilmember

Armando Gomez, Councilmember



CITY OF MILPITAS

MILPITAS CITY COUNCIL MEETING

October 5, 2004

6:00 P.M.

Council Chambers

455 E. Calaveras Boulevard

SUPPLEMENTAL AGENDA

NOTICE IS HEREBY GIVEN that the October 5, 2004, City Council/Redevelopment Agency agenda is amended by the addition of the following Closed Session item:

CONFERENCE WITH LEGAL COUNSEL: EXISTING LITIGATION

(Pursuant to Government Code Section 54956.9(a))

City of Milpitas v. RRM Design Group, et al (and Related Cross-Actions),

Alameda County Superior Court No. RG03088899

Printed and Posted October 1, 2004

Kathy Ynegas, Acting City Clerk

**CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
October 5, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard**

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

1. Conference with Real Property Negotiator

(Pursuant to Government Code Section 54956.8)

Property: Vacant Property N. Main St., south of SR237 W/B off-ramp & Main (APN 022-08-003)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

2. Conference with Legal Counsel - Anticipated Litigation

(Pursuant to Government Code Section 54956.9[b](1) and (2))

Significant Exposure to Litigation – One Case

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES: None

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

Proclamations:

- Teen Read Week, October 17-23, 2004
- Walk to School Day, October 6, 2004
- Fire Prevention Week, October 3-9, 2004

Recognition of visiting dignitaries from Huizhou City, China – and signing of Huizhou Agreement:

City of Huizhou, China, requests signatures of Mayor Esteves & Vice Mayor Dixon on *SINO-US SHANGHAI COMMUNIQUE ON THE ESTABLISHMENT OF DIPLOMATIC RELATIONSHIP BETWEEN P.R.CHINA AND U.S.A*, included in Council packet, as required by Chinese government for the establishment of sister-city relationship between City of Huizhou and City of Milpitas. On April 15, 2004, Council approved Milpitas' MOU establishing Sister City relationship. This MOU was signed by Mayor Esteves on April 28, 2004, and then mailed/signed/returned by Mayor Yebin in May 2004. MOU text states sister city relationship effective for two years from signing. Text in Huizhou's agreement has been reviewed by City Attorney and mirrors MOU signed by both Mayors with the exception that it doesn't reflect MOU duration (4/28/04 - 4/28/06).

Visiting delegation:

Zhida Xu, Vice Mayor, Huizhou Municipal People's Government

Tingqing Zhu, CEO, Daya Bay Economic & Technological Committee

Xiaohui Liu, Executive Assistant, Daya Bay Economic & Technological Committee

Xuejiao Li, Director, Huizhou Foreign & Overseas Chinese Affairs Bureau

Suiling Deng, Director, Huizhou Sports Bureau
Zixin Huang, Director, Huizhou Cultural Bureau
Guansheng Zhang, Secretary-General, Huizhou People's Assoc. for Friendship with Foreign Countries
Gaoyan Catherine Chen, Section Chief, Huizhou Foreign & Overseas Chinese Affairs Bureau, and Delegation Interpreter

15 Minute Break – Reception for Huizhou Delegation

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. ANNOUNCEMENT OF CONFLICT OF INTEREST

XI. MOMENTS OF REFLECTION

XII. APPROVAL OF AGENDA

XIII. CONSENT CALENDAR (Items with Asterisks)

XIV. PUBLIC HEARINGS

- 1. Continue the USA Properties Planned Unit Development No. PD2004-1, "S" Zone Approval No. SZ2003-11 And Use Permit No. UP2003-37 for the Property Located at 1696 South Main Street (APN 86-34-017, -019 and -020) (Staff Contact: Staci Pereira, 586-3278)**
- 2. Approve Submittal of Final Annual Report for Housing and Urban Development (HUD) Storm Grant (Staff Contact: Marilyn Nickel, 586-3347)**
- 3. Adopt Resolution to Vacate a Portion of North Main Street/Railroad Avenue, Weller Lane and Winsor Street for Roadway Purposes (Project No. 3144 and CIP 8153) (Staff Contact: Mehdi Khaila, 586-3328)**
- 4. Consider Amendments to the Zoning Ordinance, Sign Ordinance and Neighborhood Beautification Ordinance (ZT2004-2), (Staff Contact: Tambri Heyden, 586-3280)**

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor

RA2. Roll Call

RA3. Approval of Minutes: None

RA4. Approval of Agenda

RA5. Receive Progress Report on Library Design (Project No. 8162) (Staff Contact: Mark Rogge 586-3403)

RA6. Agency Adjournment

XVI. REPORTS OF OFFICERS AND BOARDS

City Council

- * 5. Approve the Mayor's Reappointments to the Arts Commission, Bicycle Transportation Advisory Commission, and Sister Cities Commission: Mayor Esteves (Staff Contact: Gail Blalock, 586-3005)
- 6. Approve Service Agreement and Budget Appropriation for Monday Library Hours at Milpitas High School: Mayor Esteves and Vice Mayor Dixon (Staff Contact: Cindy Maxwell, 586-3282)
- 7. Report on Review of Potential Conflict of Interest Issue (Staff Contact: Steve Mattas, 586-3040)

Facilities Naming Subcommittee

- * 8. Approve the Recommendation to Set a Public Hearing on November 2, 2004, to Discuss the Facilities Naming Subcommittee's Recommendations to Honor Dr. Martin Luther King, Jr. and Cesar Chavez (Staff Contact: Mark Rogge, 586-3403)

XVII. UNFINISHED BUSINESS

- * 9. Receive Odor Control Comprehensive Action Plan Update (Staff Contact: Darryl Wong, 586-3345)

XVIII. NEW BUSINESS

- * 10. Authorize the City Manager to Execute Environmental Remediation Agreement Associated with Apton Plaza Project Land Exchange (Staff Contact: Greg Armendariz, 586-3401)
- * 11. Approve Funds for Recreation Assistance Program (R.A.P) (Staff Contact: Bonnie Greiner, 586-3227)

XIX. ORDINANCES

- 12. Consider Ordinance Designating Employee Salary and Total Compensation Information by Job Title as a Public Record (Staff Contact: Steve Mattas, 586-3040)

XX. RESOLUTIONS

- * 13. Adopt a Resolution Approving a Memorandum of Understanding with Laborers' International Union Of North America (LIUNA) (Staff Contact: Cherie Rosenquist, 586-3082)

XXI. BIDS AND CONTRACTS

- * 14. Authorize the City Manager to Execute Agreement and Approve Budget Appropriation: West Yost & Associates, South Milpitas Water Line Replacement (Project No. 7098) (Staff Contact: Doug De Vries, 586-3313)
- * 15. Authorize the City Manager to Execute an Agreement with Art Bakos; Various Capital Improvement Projects (Staff Contact: Doug De Vries, 586-3313)

- * 16. **Approve Amendment to the Senior Nutrition Contract Between the County of Santa Clara (Social Services) and the City of Milpitas (Staff Contact: Kathleen Yurchak, 586-3209)**
- * 17. **Approve Agreement Amendment: Harris & Associates, Milpitas Library Project Utility Improvements (Project No. 8153) (Staff Contact: Mark Rogge, 586-3403)**
- * 18. **Approve New CIP Project and Budget Appropriation for ADA Sidewalk Ramps – 2005 (Project No. 4226) (Staff Contact: Doug De Vries, 586-3313)**

XXII. CLAIMS AND DEMANDS

- * 19. **Approve Payment Requests: Miscellaneous Vendors/Contractors (Staff Contact: Lou Zenzen, 586-3161)**

XXIII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, OCTOBER 19, 2004, AT 7:00 P.M.**

**CITY OF MILPITAS
Agenda Reports
Milpitas City Council Meeting
October 5, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard**

XIV. PUBLIC HEARINGS

- 1. Continue the USA Properties Planned Unit Development No. PD2004-1, "S" Zone Approval No. SZ2003-11 and Use Permit No. UP2003-37 for the Property Located at 1696 South Main Street (APN 86-34-017, -019 and -020) (Staff Contact: Staci Pereira, 586-3278)**

Background: At the request of the applicant, this item was continued at the September 22, 2004, Planning Commission meeting to allow additional time to work out the details of the financial assistance agreement. This continuance should allow sufficient time to finalize the remaining details of the agreement and allow review by the Planning Commission on October 13, 2004, in time for the Council's meeting on October 19, 2004.

Recommendation:

1. Keep the public hearing open.
2. Continue the Planned Unit Development No. PD2004-1, "S" Zone Approval No. SZ2003-11 and Use Permit No. UP2003-37 to October 19, 2004.

- 2. Approve Submittal of Final Annual Report for Housing and Urban Development (HUD) Storm Grant (Staff Contact: Marilyn Nickel, 586-3347)**

Background: Milpitas was awarded a \$1.32 million Federal Housing and Urban Development (HUD) grant for reimbursement of winter '98 storm expenses. This grant reimbursed Milpitas for debris clean-up, emergency response, administrative efforts, Jurgens Storm Pump Station Floodproofing, and Calaveras Road Drainage and Slope Stabilization Improvements.

The work has been completed, the reimbursements paid in full, and an audit was held in September 2004. A final Annual Report is now due and requires that a public hearing be held to inform the public of the status. The report and a memorandum detailing the grant and expenses are included in the Council's agenda packet. Upon receipt of the audit findings, the grant will be closed-out.

Recommendation:

1. Close the public hearing.
2. Approve submittal of the final annual report.

- 3. Adopt Resolution to Vacate a Portion of North Main Street/Railroad Avenue, Weller Lane and Winsor Street for Roadway Purposes (Project No. 3144 and CIP 8153) (Staff Contact: Mehdi Khaila, 586-3328)**

Background: On August 17, 2004, the City Council adopted a Resolution of Intention to vacate a portion of North Main Street/Railroad Avenue, Weller Lane, and Winsor Street. The vacation is for roadway purposes and reserves the same areas for utility easement purposes.

The proposed vacation is consistent with the long-term plan for the redevelopment of this area, as envisioned in the Midtown Specific Plan. The long-term plan includes a denser urban design with a mixture of uses: retail, residential and public uses, including the future library. On August 11, 2004, the Planning Commission found the proposed roadway vacation to be in conformance with the General Plan.

Recommendation:

1. Open the public hearing, receive any written protests, and hear testimony.
2. Close the public hearing.
3. Adopt Resolution vacating those portions of North Main Street/Railroad Avenue, Weller Lane and Winsor Street for roadway purposes and reserve the same area for public utilities.

4. Consider Amendments to the Zoning Ordinance, Sign Ordinance and Neighborhood Beautification Ordinance (ZT2004-2), (Staff Contact: Tambri Heyden, 586-3280)

Background: On May 18, 2004, staff presented to Council a proposal to expand the City's code enforcement program by amending the sign code to provide for administrative citation authority identical to that allowed under the Neighborhood Beautification Ordinance (NBO) and zoning ordinance and establish a no fee registration for temporary signs; devising a system to add weekend code enforcement; transitioning from complaint-driven enforcement to staff identification of violations; and amending the NBO, zoning code, and sign code to reduce the minimum number of days of notification from 30 to 15 and to enable levying of fines without notice for violations that pose health and safety dangers or that recur intermittently.

The Council directed staff to move forward with preparing the recommended code amendments and to involve the Community Advisory Commission (CAC) and the Economic Development Commission (EDC) in the review of the amendments. In addition to the policy direction provided by Council in May, staff utilized the opportunity to combine the recommended amendments discussed at that time with other minor amendments that are needed to the sign code to make it a clearer document for both staff and the public.

On September 1, 2004, the CAC reviewed the amendments and voted to recommend approval with no changes. On September 13, 2004, the EDC reviewed the amendments, requested more time and asked to review the amendments again at their October 11, 2004, meeting while staff prepared a written summary for them. It was discussed that this additional review could be achieved in a way that would not interfere with the adoption schedule. The report summary was sent to all EDC members the following week, as well as to the Planning Commission for the Planning Commission's September 22nd public hearing.

At the Planning Commission hearing, the Planning Commission directed staff to form a task force to include more representation than the original groups identified by the Council. For this reason, the Planning Commission did not take action on the amendments. Staff has coordinated with the Chamber of Commerce, NAIOP and the Santa Clara Valley Board of Realtors, as well as a few business owners who have expressed interest to assemble a focused task force to meet and review the amendments or a subset of the amendments during the month of October. After readvertising, a package of amendments will be brought back to the Commission and the City Council. Since an October 5, 2004, Council hearing on the amendments was advertised; this item should be removed from the agenda. It will be brought back to the Council in November.

As a point of information, the staff report and materials for the September 22, 2004, Planning Commission meeting are included in the Council's agenda packet. Briefly, the proposal included amending the zoning code to clarify and expand its administrative citation provisions. The sign ordinance is proposed to be amended to provide definitions for several types of signs, reorganize the ordinance to move several isolated but related provisions into their own stand-alone sections, make the ordinance better organized, provide design guidelines for signs, limit the size of balloon signs, require that garage sale signs and open house signs be free-standing, provide for a sign program procedure, define continuing and individual violations and extend the administrative citation powers from the NBO and zoning code to the sign ordinance. The NBO would be amended to define continuing and individual violations and reduce the violation notification timeframe from thirty days to fifteen days.

Recommendation:

1. Establish a focused group of task force representatives to review the amendments before bringing them back to the Planning Commission and City Council for public hearing.
2. Close the advertised public hearing and delete this item from the agenda.

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor

RA2. Roll Call

RA3. Approval of Minutes: None

RA4. Approval of Agenda

RA5. Receive Progress Report on Library Design (Project No. 8162) (Staff Contact: Mark Rogge 586-3403)

Background: The library project is currently in the concept design phase. The project is included in the Capital Improvement Program. Staff will give a brief presentation on the progress of the design at the Joint Redevelopment Agency and City Council Meeting.

Recommendation: Note receipt and file the progress report on the library design.

RA6. Agency Adjournment

XVI. REPORTS OF OFFICERS AND BOARDS

City Council

- * **5. Approve the Mayor's Reappointments to the Arts Commission, Bicycle Transportation Advisory Commission, and Sister Cities Commission: Mayor Esteves (Staff Contact: Gail Blalock, 586-3005)**

Background: Mayor Esteves is recommending the reappointments and alternate appointment to the following commissions:

Arts Commission: Reappoint Bill Foulk, Robin Hays, and Mareile Ogle to terms expiring October 2007.

Bicycle Transportation Advisory Commission: Reappoint Miljon Buquing for a term expiring August 2006.

Sister Cities Commission: Reappoint Debra Garcia and Arlyn Swiger to terms expiring September 2007; and reappoint Roselda Mateo to the Alternate No. 1 position for a term expiring September 2006.

Recommendation: Approve Mayor Esteves' reappointments and alternate appointment to these commissions.

- 6. Approve Service Agreement and Budget Appropriation for Monday Library Hours at Milpitas High School: Mayor Esteves and Vice Mayor Dixon (Staff Contact: Cindy Maxwell, 586-3282)**

Background: On September 7, 2004, the City Council considered a report regarding Santa Clara County Library District's plans to close all member libraries on Mondays beginning in October. One of the City Council's directions was to evaluate the need for alternative homework and study space for students on Monday afternoons.

At a recent City/School Coordination Meeting, it was proposed that the Milpitas High School Library be open Monday afternoons and evenings to accommodate students and the general public's needs for study space. The school district proposes to provide study space and library services beginning October 11, 2004, through June 13, 2005. The Milpitas High School Library is newly renovated and includes not only basic reference materials but also computers and Internet access. The Library would be open from 4:00 to 9:00 p.m. every Monday, except school holidays (November 22, December 20 and 27, January 17, February 21, April 18 and May 30). The City would reimburse the school district for staffing, security, and custodial costs at a not to exceed cost of \$18,000. A 20% contingency is included to offset any unanticipated expenses in the total project costs. Funds are available for this purpose in the Transient Occupancy Tax (TOT) 2% set-aside. In November 2000, voters indicated that the TOT set-aside could be used for library operation augmentation. As of June 30, 2004, the Library Fund has accumulated approximately \$4.25 million fund balance from the 2% TOT revenue and interest earnings. The funding request of \$18,000 will be the first time utilization of the Library Fund Balance.

Recommendation:

1. Authorize the City Manager to execute an agreement for services, at a not to exceed amount of \$18,000, with the Milpitas Unified School District subject to approval of form by the City Attorney to provide study space at the Milpitas High School Library on Monday afternoon and evenings through June 13, 2005, and
 2. Approve a budget appropriation of \$18,000 from the Library TOT Fund.
- 7. Report on Review of Potential Conflict of Interest Issue (Staff Contact: Steve Mattas, 586-3040)**

Background: Staff will present report at Council meeting.

Recommendation: Consider report and provide direction as appropriate.

Facilities Naming Subcommittee

- * **8. Approve the Recommendation to Set a Public Hearing on November 2, 2004, to Discuss the Facilities Naming Subcommittee's Recommendations to Honor Dr. Martin Luther King, Jr. and Cesar Chavez (Staff Contact: Mark Rogge, 586-3403)**

The Facilities Naming Subcommittee was created by the City Council to address appropriate ways to honor Dr. King, Cesar Chavez, and perhaps others whose leadership has positively affected the community. The subcommittee met on March 15 and April 22, 2004. Several interested residents attended the meetings. The Subcommittee's report and minutes are included in the Council packet and are available on the City's web page.

The Subcommittee made the following recommendations:

- Name the new library the "Milpitas Dr. Martin Luther King Jr. Library"
- Direct staff to develop activities and a program to celebrate Cesar Chavez Day, on or near March 31, and return to Council with a recommendation and budget.

The Subcommittee also found that it would be appropriate to receive more public input on these recommendations to consider many diverse points of view.

Since the first recommendation affects the new Library, the Subcommittee requested that the Library naming recommendation be brought to the Library Advisory Commission and the Library Subcommittee, and then to the City Council for further discussion.

The Library Advisory Commission unanimously approved a motion to reject the naming of the Library and requested that discussion regarding naming of the library include the Library Advisory Commission. After hearing the concerns of the Library Advisory Commission from

several of their members, the Library Subcommittee recommended that the information be forwarded to the City Council for consideration.

Therefore, the Facilities Naming Subcommittee recommends that the City Council set a date for a public hearing to discuss the Facilities Naming Subcommittee's recommendations to honor Dr. Martin Luther King Jr. and Cesar Chavez. Holding the public hearing on November 2, 2004, will allow sufficient time for the Public Hearing to be advertised.

Recommendations: Set the date for a public hearing on November 2, 2004, to discuss the Facilities Naming Subcommittee's recommendations to honor Dr. Martin Luther King Jr. and Cesar Chavez.

XVII. UNFINISHED BUSINESS

*** 9. Receive Odor Control Comprehensive Action Plan Update (Staff Contact: Darryl Wong, 586-3345)**

Background: During the month of September, the number of odor complaints has increased as a result of warmer weather conditions (daily temperatures have averaged as high as 97 degrees Fahrenheit). As a result, both the Water Pollution Control Plant (WPCP) and Browning-Ferris Industries (BFI) have implemented increased oversight and operational revisions to manage incidents as follows:

- The WPCP has delayed sludge removal from drying beds and have increased odor monitoring activities to prevent odor migration.
- BFI has used weather data to adjust operations.

In addition, the Bay Area Air Quality Management District (BAAQMD) has streamlined the complaint process to bypass interviews with complainants before tracing the source of the odor. BAAQMD has reported the following number of complaints:

• October 2003:	96
• November 2003:	50
• December 2003:	17
• January 2004:	31
• February 2004:	11
• March 2004:	23
• April 2004:	22
• May 2004:	13
• June 2004:	15
• July 2004:	19
• August 2004:	29
• September (as of September 27) 2004:	38

Recommendation: Note receipt and file progress report.

XVIII. NEW BUSINESS

*** 10. Authorize the City Manager to Execute Environmental Remediation Agreement Associated with Apton Plaza Project Land Exchange (Staff Contact: Greg Armendariz, 586-3401)**

Background: The City Council approved the Apton Plaza project and associated Land Exchange Agreement on September 7, 2004. The land exchange involves the abandonment of portions of Weller Lane, North Main Street and Railroad Court (totaling 8,940 sq. ft.) in exchange for City acquisition of the southeast corner of the existing parcel (6,165 sq. ft.) and portions of N. Main Street (1,857 sq. ft.).

Prior to the conveyance of all properties, environmental remediation costs up to \$50,000 must be paid by the landowner. As allowed by the Land Exchange Agreement, if the remediation of the parcels the City is acquiring is not complete prior to the close of escrow, an Environmental Remediation Agreement would be executed. This agreement has now been prepared and includes provisions for the landowner to deposit \$50,000 for the remediation work in escrow and to be reimbursed should the cost of clean-up not exceed \$50,000.

Recommendation: Authorize the City Manager to execute the Environmental Remediation Agreement associated with the Apton Plaza project land exchange.

*** 11. Approve Funds for Recreation Assistance Program (R.A.P) (Staff Contact: Bonnie Greiner, 586-3227)**

Background: In May 2004, Recreation Services co-sponsored with the Children Discovery Museum of San Jose and hosted Circus Chimera at the Milpitas Sports Center Football field. For the co-sponsorship efforts, Recreation Services has received a share of the proceeds of tickets sales in the sum of \$2,591.38.

Since this was a community oriented event, Recreation Services is requesting that the proceeds be deposited and used toward the Recreation Assistance Program (R.A.P.) to financially assist qualified Milpitas residents so that they may participate in the many exciting and fun recreation programs which the City offers.

Recommendation: Approve \$2,591.38 proceeds from Circus Chimera tickets sales to be allocated to the Recreation Services R.A.P. Program.

XVIII. ORDINANCES

12. Consider Ordinance Designating Employee Salary and Total Compensation Information by Job Title as a Public Record (Staff Contact: Steve Mattas, 586-3040)

Background: At the City Council meeting of September 14, 2004, the City Council provided the City Attorney with direction to draft a "sunshine" type ordinance identifying employee salary and total compensation information by job title as a public record. The City Council also directed that we review relevant MOU and Personnel Rule provisions and provide the draft ordinance to employee groups for their comment. The proposed ordinance has been provided to the employee group representatives and they have not requested any changes.

The attached draft ordinance would require public disclosure of gross earnings by job title, including base salaries and other compensation. Other compensation includes allowances, overtime, deferred compensation, leave cash out payments, and the percentage of base salaries that the City pays as the employer's CalPERS contribution.

Recommendation: Consider the attached draft ordinance and then:

1. Waive reading beyond the title; and
2. Introduce Ordinance No. 266.

XIX. RESOLUTIONS

*** 13. Adopt a Resolution Approving a Memorandum of Understanding with Laborers' International Union of North America (LIUNA) (Staff Contact: Cherie Rosenquist, 586-3082)**

Background: The most recent Memorandum of Understanding with the Laborers' International Union of North America (LIUNA) expired on June 30, 2004. City representatives and representatives from Laborers' International Union of North America (LIUNA) met and

conferred in good faith to negotiate a new contract. Agreement has been reached on both sides and the new Memorandum of Understanding covering the period July 1, 2004, through December 31, 2005, is included in the Council's agenda packet.

Recommendation: Adopt a Resolution approving the Laborers' International Union of North America (LIUNA) Memorandum of Understanding for the period July 1, 2004, through December 31, 2005.

XX. BIDS AND CONTRACTS

- * **14. Authorize the City Manager to Execute Agreement and Approve Budget Appropriation: West Yost & Associates, South Milpitas Water Line Replacement (Project No. 7098) (Staff Contact: Doug De Vries, 586-3313)**

Background: This project is included in the current five-year Capital Improvement Program (CIP). The completed project will replace approximately 4,800 linear feet of 16-inch diameter steel water main in South Milpitas Boulevard between East Calaveras Boulevard and Yosemite Drive.

Staff has interviewed several professional consultants in conformance with the City's consultant selection process, and recommends that West Yost & Associates provide the required design, bid period and construction support services required to design the improvements for this project. Staff has negotiated a scope and fee for these services not to exceed \$300,000, which is considered reasonable for the work.

This section of water main has been identified as a "backbone" main in the City's Emergency Management Plan. Backbone mains are to be strengthened to improve system reliability during a seismic event. Additional geotechnical and design services are required to develop an appropriate design. A budget appropriation in the amount of \$100,000 from the Water Fund is proposed to supplement the project's uncommitted balance and cover the costs associated with this agreement.

Recommendation:

1. Authorize the City Manager to execute the agreement with West Yost & Associates, in the amount of \$294,632, subject to approval as to form by the City Attorney.
2. Approve budget appropriation in the amount of \$100,000 from the Water Fund to the South Milpitas Water Line Replacement (Project No. 7098).

- * **15. Authorize the City Manager to Execute an Agreement with Art Bakos; Various Capital Improvement Projects (Staff Contact: Doug De Vries, 586-3313)**

Background: Staff has identified the need for professional consulting services to create a database to track and report on the Capital Improvement Program. The creation and use of a database in lieu of the current Excel based reports is expected to greatly facilitate the creation of reports to track the finances, schedule and goals of the Capital Improvement Program. Staff believes that significant cost savings are possible by implementing such a database. In accordance with the City's consultant selection process, Art Bakos has been selected to create a database and associated documentation for the Annual CIP Report, Bi-Monthly CIP Report, and other Engineering related work.

Art Bakos has relevant experience in database creation and maintenance of these types of projects. In addition, staff has previous favorable experience with this consultant. The work is proposed on a time and materials basis and sufficient funds are available in the respective project budgets.

Recommendation: Authorize the City Manager to execute a professional services contract with Art Bakos, based on time and materials not to exceed \$25,000, subject to approval as to form by the City Attorney.

- * 16. **Approve Amendment to the Senior Nutrition Contract Between the County of Santa Clara (Social Services) and the City of Milpitas (Staff Contact: Kathleen Yurchak, 586-3209)**

Background: The City of Milpitas has contracted with the County of Santa Clara in implementing the Senior Nutrition Program since March 1978. The Program serves seniors, sixty years and older, and was originally budgeted to serve 249 days per year with an average of 68 meals per day, for a total of 17,025 meals per year. With the amended contract from the County of Santa Clara, the program will be able to serve an average of 75 meals per day and 18,675 people. With the opening of the Annex the number of Nutrition Program participants has increased by 6%. Included in the Council's agenda packet is a copy of the third Amended Contract between the County of Santa Clara (Social Services) and the City of Milpitas. The total amended budget for the FY 2004/05 Nutrition Program, shared by the City of Milpitas and Santa Clara County, is \$122,759. As outlined in the County's contract, the City's contribution to the program is 50% of the budget or \$61,380. The additional funding is available in the Senior Center's operating budget within Recreation Services. The contract is subject to approval as to form by the City Attorney.

Recommendation: Approve the third amendment to the contract between the County of Santa Clara (Social Services) and the City of Milpitas for July 1, 2004, through June 30, 2005. The total amount of this contract is \$122,759, with the City and County each responsible for one half of the amount or \$61,380, not to exceed \$3.64 per meal. Sufficient funds have been approved in the FY 2004/05.

- * 17. **Approve Agreement Amendment: Harris & Associates, Milpitas Library Project Utility Improvements, (Project No. 8153) (Staff Contact: Mark Rogge, 586-3403)**

Background: On October 7, 2003, City Council awarded a consultant contract to Harris and Associates for mapping survey, and utility engineering services as part of the library pre-design effort for Winsor, Weller, and Main Streets. Harris is currently preparing designs for the off-site utilities and the official street Plan Lines for Winsor and Weller Avenue. The north Main St. area of the Midtown is in a federally designated floodplain.

Staff proposes to amend Harris's contract to evaluate the flood hazard in this area including the new library and parking garage locations. Specifically, this evaluation is needed to confirm the origin of the flooding, refine available data, and determine how recently completed local improvements affect the flood hazard. Staff has negotiated the scope of work and the fee for these professional services not-to-exceed amount \$30,000. Funds are available in the project budget for this amendment.

Recommendation: Authorize the City Manager to execute the agreement amendment with Harris and Associates in the amount not to exceed \$30,000 subject to approval as to form by the City Attorney.

- * 18. **Approve New CIP Project and Budget Appropriation for ADA Sidewalk Ramps – 2005 (Project No. 4226) (Staff Contact: Doug De Vries, 586-3313)**

Background: This project involves the installation of sidewalk ramps at street intersections in order to meet ADA requirements. Ramps are installed at locations such as those along major thoroughfares, vicinity of parks, schools and other attraction centers.

Staff has recently received a request from residents for ADA accessible ramps along Escuela Parkway near Pomeroy, Russell Middle and Milpitas High Schools. Staff has determined that additional ADA accessible ramps are appropriate for this area.

This project is included in the 2004-2009 Capital Improvement Program Final Report for construction in fiscal year 2005/06. In order to install these ramps in 2004-05, staff is requesting the approval and funding of this project for the current fiscal year.

An appropriation of \$40,000 is required to proceed on the project. Financing for this project is available from the Street Fund and is deemed an appropriate use for these funds. Council approval of this Capital Improvement Project is recommended.

Recommendation:

1. Approve new CIP Project No. 4226 ADA Sidewalk Ramps – 2005.
2. Appropriate \$40,000 from the street fund to be applied to this new project.

XXII. CLAIMS AND DEMANDS

- * 19. Approve Payment Requests: Miscellaneous Vendors/Contractors (Staff Contact: Lou Zenzen, 586-3161)**

Background: In accordance with direction given by City Council at its August 15, 1995, meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

\$8,373.75 to JAM Services, Inc. for the purchase of two traffic signal battery backup systems for the Bellew/McCarthy and Bellew/Cypress intersections for the Public Works Department. Street Maintenance staff will install the systems. (Funds are available from the Traffic Signals Modifications [Project No. 4167] project budget for this purchase.)

Recommendation: Approve the purchase request.

XXIII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, OCTOBER 19, 2004, AT 7:00 P.M.**

**CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
September 21, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard**

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

1. Conference with Legal Counsel: Existing Litigation

(Pursuant to Government Code Section 54956.9(a))

Milpitas v. Turner Construction et al., Santa Clara County Superior

Court case number CV814946, consolidated with case number 103 CV 008400

2. Conference with Real Property Negotiator

(Pursuant to Government Code Section 54956.8)

Property: Vacant Property N. Main St., south of SR237 W/B off-ramp & Main (APN 022-08-003)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES: September 7, 2004

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS (NONE)

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. ANNOUNCEMENT OF CONFLICT OF INTEREST

XI. MOMENTS OF REFLECTION

XII. APPROVAL OF AGENDA

XIII. CONSENT CALENDAR (Items with Asterisks)

XIV. PUBLIC HEARINGS

1. **Adoption of the Community Development Block Grant (CDBG) Consolidated Annual Performance Evaluation Report-CAPER (Staff Contact: Felix Reliford, 586-3071)**

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

- RA1. Call to Order by the Mayor**
- RA2. Roll Call**
- RA3. Approval of Minutes: September 7, 2004**
- RA4. Approval of Agenda**
- RA5. Approve Conceptual Design and Approve Consultant Agreement: Sports Center Circulation, SSA Landscape Architects, Inc., (Project No. 8149) (Staff Contact: Mark Rogge, 586-3403)**
- RA6. Agency Adjournment**

XVI. REPORTS OF OFFICERS AND BOARDS

City Council

2. **Receive Presentation from First 5 Santa Clara County: Mayor Esteves (Staff Contact: Cindy Maxwell, 586-3282)**
3. **Approve Resolution in Support of Proposition 1A: Mayor Esteves (Staff Contact: Thomas Wilson, 586-3050)**
- * 4. **Approve the Mayor's Appointment to the Arts Commission and Reappointment to the Bicycle Transportation Advisory Commission (BTAC): Mayor Esteves (Staff Contact: Gail Blalock, 586-3001)**

Parks, Recreation, and Cultural Resources Commission

- * 5. **Approve Two Individual Family Child Care Assistance Fund Grant Requests (Staff Contact: Toby Librande, 586-3203)**
- * 6. **Approve One (1) Individual and Three (3) Organizational Youth Sports Assistance Fund Grant Requests (Staff Contact: Kerrilyn Ely, 586-3231)**

XVII. UNFINISHED BUSINESS

7. **Council Discussion and Direction Concerning Appointment Process to Fill a Vacancy On the Planning Commission (Staff Contact: Gail Blalock, 586-3001)**
- * 8. **Appoint Remaining Two Ethics Evaluators to Serve on the Ethics Evaluation Panel (Staff Contact: Tambri Heyden, 586-3280)**

XVIII. NEW BUSINESS

- * 9. **Approve Permit Fee Waiver for Fire Inspection/Permit for Food Concession for the Wings of Rogallo Silent Air Show at Ed Levin Park (Staff contact: Gail Blalock, City Clerk, 586-3001)**

XIX. ORDINANCES (NONE)

XX. RESOLUTIONS

- * 10. **Adopt a Resolution to Reclassify a Neighborhood Preservation Assistant (Staff Contact: Cherie Rosenquist, 586-3090/Tambri Heyden, 586-3280)**

XXI. BIDS AND CONTRACTS

- * 11. **Authorize the Purchase of Software Licenses from NetMotion Inc. to Support Mobile Computing in an Amount Not to Exceed \$32,000 (Project No. 8093) (Staff Contact: Terry Medina, 586-2703)**
- * 12. **Authorize the Purchase and Installation of Equipment to Support a Wireless Connection to McCarthy Ranch Pump Station in an Amount Not to Exceed \$48,100 (Project No. 8093) (Staff Contact: Terry Medina, 586-2703)**
- * 13. **Authorize the City Manager to Execute a Joint Use Agreement: Santa Clara Valley Water District, Coyote Creek Trail Reach 1 (Project No. 4206) (Staff Contact: Greg Armendariz, 586- 3401)**
- * 14. **Approve Permittee Dedication and Improvement Agreement and Improvement Plans For 600 Evans Road (Project No. 2285) (Staff Contact: Mehdi Khaila, 586-3328)**
- * 15. **Authorize City Manager To Execute Agreement Amendment: Sandis Humber Jones, Alignment Alternative Study, Pedestrian/Bicycle Overcrossing, Project No. 4213 (Staff Contact: Mike McNeely, 586-3301)**
- * 16. **Authorize City Manager to Execute Amendment Agreement: SSA Landscape Architects, Inc., Hetch-Hetchy Landscape Renovation (Project No. 5053) (Staff Contact: Doug DeVries, 586-3313)**
- * 17. **Authorize the City Manager to Execute the Agreement with Raines, Melton, and Carella Consultants for a Sewer Flow Allocation Study (Staff Contact: Darryl Wong, 586-3345)**
- * 18. **Award Construction Contract: Water System Air Relief Valve Modifications – Phase I, Project No. 7086, (Staff Contact: Doug DeVries, 586-3313)**
- * 19. **Authorize City Manager to Execute Agreement Amendment: Lowney Associates, Main Sewage Pump Station Demolition and Site Improvements, Phase I, Project No. 6079 (Staff Contact: Greg Armendariz, 586-3401)**
- * 20. **Award Construction Contract to the Lowest Responsive Bidder, ICONCO, Inc., and Waive Minor Bid Irregularities, and Reject the Lowest Bid by Peak Engineering as Nonresponsive: Main Sewage Pump Station Demolition and Site Improvements Phase I, Project No. 6079 (Staff Contact: Greg Armendariz, 586-3401)**
- * 21. **Award Bid for Intersection Video Detection Systems (Project No. 4223) (Staff Contact: Lou Zenzen, 586-3161)**
- * 22. **Authorize Purchase of Replacement Public Safety Radios (Project No. 8125) (Staff Contact: Lou Zenzen, 586-3161)**

XXII. CLAIMS AND DEMANDS

- * 23. **Approve Payment Requests: Miscellaneous Vendors/Contractors (Staff Contact: Lou Zenzen, 586-3161)**

XXIII. ADJOURNMENT

CITY OF MILPITAS
Agenda Reports
Milpitas City Council Meeting
September 21, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

XIV. PUBLIC HEARINGS

1. Adoption of the Community Development Block Grant (CDBG) Consolidated Annual Performance Evaluation Report-CAPER (Staff Contact: Felix Reliford, 586-3071)

Background: The Consolidated Annual Performance Evaluation Report (CAPER) is a HUD mandated report that describes the City's one-year CDBG programs and activities undertaken during the past CDBG program year, 2003-2004. The CAPER also evaluates the City's overall progress in carrying out those priority projects that were identified in the approved Five-Year Consolidated Plan and One-Year Action Plan.

A copy of the CAPER has been included in the Council's agenda packet. The report identifies the following major accomplishments:

- Proposes and/or approval of 1,648 new housing units to the Milpitas housing stock, including approximately 392 new affordable rental and for-sale housing units for very low, low, and moderate-income households;
- Exceeding the goal of 200-250 new affordable housing units identified in the Five-Year Consolidated Plan (2002-2007);
- Implementation of the Consolidated Plan, Midtown Specific Plan, General Plan Housing Element policies and goals to support and encourage affordable housing opportunities for Milpitas residents;
- Financial assistance provided to affordable housing projects, the Interim Senior Center and the Shelter for Homeless and Runaway Youths;
- Funding to assist 24 different public service agencies and housing providers; and
- Rehabilitation of eight single-family homes through Milpitas' Single Family Rehabilitation Loan Program.

The CAPER has been advertised for public review and comments for 15 days (August 23-September 8, 2004). Copies of the CAPER were sent to all service and housing providers that received CDBG funds from the City and other interested parties. Copies were also made available at City Hall and the Library. Staff has not received any public comments.

Recommendation:

1. Close the public hearing.
2. Adopt the Consolidated Annual Performance Evaluation Report for FY 2003-2004.

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor

RA2. Roll Call

RA3. Approval of Minutes: September 7, 2004

RA4. Approval of Agenda

RA5. Approve Conceptual Design and Approve Consultant Agreement: Sports Center Circulation, SSA Landscape Architects, Inc., (Project No. 8149) (Staff Contact: Mark Rogge, 586-3403)

Background: The Sports Center Master Plan identified the need to improve automotive and pedestrian circulation at the Sports Center. The proposed circulation improvements will also provide better vehicular and pedestrian access, additional parking and support future recreational improvements at the Sports Center. The proposed conceptual plan reorganizes access with a focus on pedestrian safety. The plan also improves the streetscape along Calaveras Boulevard with revised entry points and modest landscaping.

The concept was presented to PRCRC and the Milpitas Unified School District for their review and both groups recommended that the City Council approve the concept plan. Staff will provide a brief presentation of the circulation concept at the City Council meeting.

Using the concept plan as a basis of design, staff received proposals from three design firms. SSA Landscape Architects, Inc., was selected in accordance with the consultant selection process, for a fee in the amount of \$229,489.00, which is considered reasonable for this work.

Recommendation:

1. Approve the Sports Center Circulation Concept Plan
2. Authorize the City Manager to execute the consultant service agreement with SSA Landscape Architects, Inc., in the amount of \$229,489.00, subject to approval as to form by the City Attorney.

RA6. Agency Adjournment

XVI. REPORTS OF OFFICERS AND BOARDS

City Council

2. Receive Presentation from First 5 Santa Clara County: Mayor Esteves (Staff Contact: Cindy Maxwell, 586-3282)

Background: A representative from First 5 Santa Clara County (FIRST 5 SCC) will provide a presentation. FIRST 5 SCC's mission is to support the healthy development of children through age 5 and enrich the lives of their families and communities. A goal of the Commission is to inform public officials and community leaders about how FIRST 5 SCC is currently supporting the healthy development of this county's youngest children.

The presentation will overview:

- Background and organization of the FIRST 5 program;
- Current funded initiatives and programs;
- Programs and activities in Milpitas; and,
- The new 5-year Community Investment Plan.

Recommendation: Receive presentation from FIRST 5 SCC.

3. Approve Resolution in Support of Proposition 1A: Mayor Esteves (Staff Contact: Thomas Wilson, 586-3050)

Background: Proposition 1A is an initiative that will be on the November ballot. Proposition 1A will prevent the State Legislature from taking and using funds originally committed to local governments.

Proposition 1A also requires the state to reimburse local governments for the cost of programs and services it mandates cities, counties, and special districts provide. If the State fails to provide

reimbursement to local governments for state mandated local programs, the mandate must be suspended, except for specified employee rights and benefits.

Proposition 1A allows for flexibility in the event of a future state fiscal emergency. The State may borrow local government funds, only if the governor declares a fiscal necessity and 2/3 of the legislature approve. All funds must be repaid with three years.

Recommendation: Adopt resolution supporting Proposition 1A.

- * 4. **Approve the Mayor's Appointment to the Arts Commission and Reappointment to the Bicycle Transportation Advisory Commission (BTAC): Mayor Esteves (Staff Contact: Gail Blalock, 586-3001)**

Background: Mayor Esteves is recommending the appointment of Juniel-Butler to the Alternate No. 2 position on the Arts Commission and the reappointment of Bill Reisinger to the Bicycle Transportation Advisory Commission.

Copies of all current applications for the Arts Commission and BTAC are included in the Council's agenda packet.

Recommendation: Approve the Mayor's appointment of Juniel-Butler to the Alternate 2 position on the Arts Commission for a term expiring October 2006; and reappoint Bill Reisinger to a three-year term on BTAC for a term expiring August 2007.

Parks, Recreation, and Cultural Resources Commission

- * 5. **Approve Two Individual Family Child Care Assistance Fund Grant Requests (Staff Contact: Toby Librande, 586-3203)**

Background: The purpose of the Family Child Care Assistance Fund is to increase program quality in Milpitas family childcare homes. By submitting a grant request to the City, approved Milpitas family child care providers have the opportunity to purchase services and supplies which will create safer and more enriching environments for children.

The City Council appropriated \$6,000.00 to the Family Child Care Assistance Fund for FY 2004-2005. Of these funds, \$1,050 is currently available for distribution. As of the 2002-2003 fiscal year, the City of Milpitas Family Child Care Assistance Fund Policies and Procedures allowed a yearly maximum of \$500.00 per applicant. In addition, the PRCRC and City Council approved revised Policies and Procedures that took effect July 1, 2004. Applicants are now not required to have 51% of their clients be Milpitas residents. In lieu of this previous requirement, however, the application has been adapted to begin collecting data regarding resident/work status of the provider's clients (see attachment Family Child Care Assistance Fund Client Resident & Work Status). First priority funding was also implemented for providers caring for children with special needs or developmental delays.

Two family child care providers submitted applications for funding assistance to be reviewed by the Parks, Recreation and Cultural Resources Commission, but were unable to attend the August 2004 meeting. The providers applications were reviewed at the September 13, 2004, PRCRC meeting. Each applicant meets the established criteria.

Provider Name & Date Application Received	Funding Request	Grant Years Funded	Special Needs children enrolled?	Last FY Funding Status	Grant request for what services/supplies?
Laura Cooper 6/22/04	\$500	99/00	Yes Two children	Application received last year after all	Reimbursement for Mission College special needs course "Facilitating

				the funding had been disbursed	Inclusion in Early Childhood Programs”, sensory table and supplies, manipulatives, language activities
Francisca Diaz 7/14/04	\$500	None	No	Never before funded	Outside play equipment such as a swing, slide, monkey bars, playhouse for physical and social development, tuition fees for early childhood education course, computer for the children to improve motor coordination and study skills

The Parks, Recreation and Cultural Resources Commission reviewed Laura Cooper and Francisca Diaz’s grant applications and is recommending approval of grant funding to the providers in the following denominations:

\$500 to Laura Cooper
\$500 to Francisca Diaz

There is currently a balance of \$1,050.00 in the Fund. Should the grants be approved, \$50 will remain in the Family Child Care Assistance Fund for the remainder of the FY 2004/2005.

Recommendation: Approve grant funding from the Individual Family Child Care Assistance Fund to the family childcare providers listed as approved by the PRCRC.

* **6. Approve One (1) Individual and Three (3) Organizational Youth Sports Assistance Fund Grant Requests (Staff Contact: Kerrilyn Ely, 586-3231)**

Background: On June 15, 2004, the Milpitas City Council approved and appropriated \$8,000 for the Youth Sports Assistance Fund for fiscal year 2004-05. Included in the Council agenda packet for review and consideration is one (1) Individual and three (3) Group Youth Sports Assistance Fund applications.

One (1) Individual Youth Sports Assistance Fund Application was received from Martin McKeefery, requesting \$500.00 to offset cost of competing in the Legends Cars National in Las Vegas Nevada on October 7- 9, 2004.

This application falls within the guidelines, under section, “Funding consideration will be given”, page 3, item #4 states; “As an event occurring where additional funding is required for a special event where participants are advancing beyond the normal spectrum of league play, hence additional expenses.”

One (1) Organizational Youth Sports Assistance Fund Application was received from Milpitas Youth Soccer Club, requesting \$ 1,000.00 to offset the cost of purchasing one set of soccer goals for their U10 division.

One (1) Organizational Youth Sports Assistance Fund Application was received from Milpitas North Little League, requesting \$ 1,000.00 to offset the cost of purchasing a scoreboard for the Senior Baseball Field at Dixon Landing Park.

One (1) Organizational Youth Sports Assistance Fund Application was received from Milpitas Red Devils Youth Baseball, requesting \$ 1,000.00. Applicant requests \$500.00 offset the cost of purchasing one (1) pitching machine and \$500.00 to offset team travel cost of competing in the Desert Classic on October 29th- 31st in Las Vegas, Nevada.

These organizational applicants meet the eligibility for the grant process. Staff has reviewed the items requested and has found that the requested items meet the application guidelines, under the section, "Funding consideration will be given," page 2, and item #3 states; "To one time activities or capital equipment purchases designed to address a need or problem which organization cannot routinely finance" and under section, "Funding consideration will be given", page 3, item #4 states; "As an event occurring where additional funding is required for a special event where participants are advancing beyond the normal spectrum of league play, hence additional expenses."

The Parks, Recreation and Cultural Resources Commission reviewed individual and organizational applications on September 13, 2004, recommended approval of one (1) Individual Youth Sports Grant of \$500.00 to Martin McKeefery and three (3) organizational requests of \$1,000.00 each to Milpitas Youth Soccer Club, Milpitas North Little League and Milpitas Red Devils Baseball.

There is currently a balance of \$7,000.00 in the 2004-2005 Youth Sports Assistance Fund.

Recommendation: Approve one (1) individual and three (3) organizational youth sports assistance fund grants as recommended by the Parks, Recreation and Cultural Resources Commission leaving a balance of \$3,500.00 for the remainder of the fiscal year.

XVII. UNFINISHED BUSINESS

7. Council Discussion and Direction Concerning Appointment Process to Fill a Vacancy On the Planning Commission (Staff Contact: Gail Blalock, 586-3001)

Background: On August 3, 2004, the Council directed staff to advertise for applications to fill a vacancy on the Planning Commission created by the resignation of Dem Nitafan. Staff placed a quarter page ad in the Milpitas Post for four weeks and an Announcement was also included on the City's web site. A filing deadline of Monday, September 13, 2004, was advertised and as of that date, only one application was submitted. Staff extended the filing deadline and a verbal update will be presented at the Council meeting.

Recommendation: Discuss process and direct staff accordingly.

*** 8. Appoint Remaining Two Ethics Evaluators to Serve on the Ethics Evaluation Panel (Staff Contact: Tambri Heyden, 586-3280)**

Background: At the September 7, 2004, City Council meeting, the Council appointed three of the four required ethics evaluators to serve on the Ethics Evaluation Panel – the minimum number needed to ensure the Panel is in place on September 18, 2004, the effective date of the ordinance. One of the three appointments, Daniel Purnell, was an interim appointment for the one-year term evaluator. Due to time commitment, Mr. Purnell agreed to serve until the City continued its search to replace him. In addition, the two-year term evaluator position is vacant. In the Council's agenda packet, there is a memorandum from the City's ethics consultant, Dr. Tom Shanks, discussing names and qualifications of two individuals to serve as the remaining two evaluators – one to replace Daniel Purnell's one-year term and one to fill the two-year term.

Recommendation: Approve Dr. Shanks' recommendation for the persons to be appointed as the remaining two evaluators with whom staff will negotiate and enter into consultant agreements.

XVIII. NEW BUSINESS

*** 9. Approve Permit Fee Waiver for Fire Inspection/Permit for Food Concession for the Wings of Rogallo Silent Air Show at Ed Levin Park (Staff Contact: Gail Blalock, City Clerk, 586-3001)**

Background: On September 7, 2004, the City Council approved the Entertainment Event Permit for the non-profit Wings of Rogallo Silent Air Show held at Ed Levin Park on Sunday, September 19, 2004. The Milpitas Rotary Club partnered with the Wings of Rogallo Hanggliding Club in the presentation of the Silent Air Show and provided the food and beverage concessions at the event. All proceeds from the concessions will support the Milpitas Rotary Club's scholarship program. At the time of the approval of the event permit, the Rotary Club was not aware of the permits and inspections required by the Milpitas Fire Department to ensure the public's safety.

The Milpitas Rotary Club respectfully requests the waiver of the fees in order for all of the proceeds of the event to be used to support its scholarship program for Milpitas youth.

Recommendation: Approve the request from the Milpitas Rotary Club to waive the permit fees for the food and beverage concessions at the Wings of Rogallo Silent Air Show.

XVIII. ORDINANCES (NONE)

XIX. RESOLUTIONS

- * 10. **Adopt a Resolution to Reclassify a Neighborhood Preservation Assistant (Staff: Cherie Rosenquist, 586-3090/Tambri Heyden, 586-3280)**

Background: Periodically employee classifications are studied to review proper classification placement due to a change of assignment(s), organizational structure, internal alignment and/or other related changes or conditions.

At the request of the Acting Planning and Neighborhood Services Director, a reclassification study on Mr. Christopher Schaller, Neighborhood Preservation Assistant, was performed by the Human Resources Department. The study included a review of assignments and internal comparison. The analysis revealed significant replication of duties between incumbent's duties and those of the higher the classification, Housing and Neighborhood Preservation Specialist. The incumbent currently performs most of the same assigned duties of the higher classification. The workload demands of the unit call for performing the duties to prevent significant backlogs from occurring.

Therefore, a reclassification to the next higher level in the classification series, Housing and Neighborhood Preservation Specialist, would provide an appropriate salary commensurate with the job duties being performed. This action would adjust the incumbent's current monthly salary to the second step of the new salary range. Sufficient funds are available in the Department's budget. A review of this change was conducted with the appropriate bargaining unit.

Recommendation: Adopt a resolution approving the above recommendation to reclassify a regular, full-time classified employee, Mr. Christopher Schaller, from his current classification of Neighborhood Preservation Assistant to the classification of Housing and Neighborhood Specialist effective October 3, 2004.

XX. BIDS AND CONTRACTS

- * 11. **Authorize the Purchase of Software Licenses from NetMotion Inc. to Support Mobile Computing in an Amount Not to Exceed \$32,000 (Project No. 8093) (Staff Contact: Terry Medina, 586-2703)**

Background: In fiscal year 2001/2002, the City of Milpitas implemented mobile computing in its Police vehicles that supports the safety of the City's residents and Police Officers. The system includes mobile computing hardware that was manufactured by Data911 and mobile computing

software that was developed by Padcom, Inc. The mobile computing hardware and software is installed in 30 Police vehicles.

In fiscal year 2003/2004 the City began the implementation of mobile computing in its Fire vehicles that supports the safety of the City's residents and Fire Department personnel. The Fire vehicles are scheduled to be completed and operational in November 2004. The system includes mobile computing hardware that was manufactured by Data911 and will be installed in 20 Fire vehicles.

For the original installation of mobile computing the City chose Padcom, Inc., which is headquartered in Pennsylvania, to provide the software licenses to operate the wireless network. Since the original installation, NetMotion Inc., which is located in Fremont, California, has improved their software and is offering to provide the City with a lower cost solution. Information Services staff has installed a trial version of the NetMotion software and tested it extensively throughout the City. The results of those tests indicate that the NetMotion mobile software is more robust and stable than the Padcom mobile software.

Staff recommends that the City purchase NetMotion, Inc. software licenses to support both the Police and Fire Department's mobile computing needs. In addition, staff recommends that the City purchase additional NetMotion software licenses at the lower cost in preparation of providing wireless access to any employee working in the field requiring network access while away from their desktop computer.

Approval of the purchase of mobile computing software licenses from NetMotion, Inc. will provide the City with the ability to connect up to 100 devices remotely to the City's fiber optic network. In addition, the annual maintenance cost of the mobile computing software licenses will result in a cost savings as compared to those charges that would have been incurred using the Padcom software licenses.

Funding is available in the Capital Improvement Program (CIP) 8093 - Telecommunications Infrastructure to support the purchase of the mobile computing software licenses from NetMotion, Inc.

Recommendation: Authorize the purchase of 100 mobile computing software licenses from NetMotion, Inc. to support mobile computing in an amount not to exceed \$32,000 through funds that are available in CIP 8093 (Telecommunications Infrastructure).

- * 12. **Authorize the Purchase and Installation of Equipment to Support a Wireless Connection to McCarthy Ranch Pump Station in an Amount Not to Exceed \$48,100 (Project No. 8093) (Staff Contact: Terry Medina, 586-2703)**

Background: The City of Milpitas operates and maintains 13 Pump Stations located throughout the City limits. These pump stations are used to minimize the chances of flooding in the City during the rainy season. Most of the pump stations are connected to the City's Emergency Dispatch Center through a telephone line that allows for the transmission of an alarm message whenever the pumps at the station begin to operate. After the alarm is sent to the Emergency Dispatch Center, staff is contacted and a field inspection is done to verify that the pumps are operating properly.

The McCarthy Ranch Pump Station used an analog cellular phone line to communicate with the Emergency Dispatch Center. During fiscal year 2003/2004, the cellular service provider stopped providing analog cellular phone signals and discontinued service with the City. Staff discovered the discontinued service during their routine testing of the alarms and contacted the service provider requesting reinstatement of the service. Unfortunately, the service provider no longer provides analog cellular phone lines nor does any other cellular phone service provider.

There are two options available to the City to restore the analog phone line to the McCarthy Ranch pump station prior to the onset of winter storms. The first option involves requesting that P.G.E install a new telephone pole and that SBC install a new phone line from the McCarthy Ranch living units to the McCarthy Ranch pump station. This option would require a significant amount of lead-time for both P.G.E and SBC and would be very expensive for the City. The second option is to expand the City's wireless network along McCarthy Ranch Boulevard and install wireless equipment on the pump station allowing for a connection on the expanded wireless network. This option would be much less expensive and would eliminate the dependency on P.G.E. and SBC and the corresponding possible time delays. In addition, the installation of the higher speed devices on top of the Public Works Building, Crowne Plaza Hotel and McCarthy Ranch Pump Station would also provide the capability of allowing voice and data connections at the proposed new Public Works Corporation Yard to be located at the former sewage treatment plant.

NetVersant Northern California, Inc., is a local (Milpitas, California) mobile computing and wireless company that specializes in offering Radio Frequency (RF) Data Communication Systems. NetVersant partnering with Proxim, Inc. has developed a solution for providing an analog voice line to the McCarthy Ranch pump station. In addition, their solution will provide data connections to the pump station and any other facility that the City locates within the area. Finally, the solution will expand to the City's current wireless network into the McCarthy Ranch area that will improve mobile computing in public safety vehicles that routinely travel through that area.

Staff recommends that the City Council authorize the purchase and installation of equipment to support a wireless connection to the McCarthy Ranch Pump Station from NetVersant Northern California, Inc. Netversant is an authorized vendor on the California Multiple Awards Schedule (CMAS).

Approval of the purchase and installation of equipment to support a wireless connection to the McCarthy Ranch Pump Station will allow for notification to the Emergency Dispatch Center whenever the pumps are activated. Funding in an amount not to exceed \$48,100 is available in the Capital Improvement Program (CIP) 8093 - Telecommunications Infrastructure to support the purchase and installation of equipment from NetVersant Northern California, Inc.

Recommendation: Authorize the purchase and installation of equipment to support a wireless connection to the McCarthy Ranch Pump Station from NetVersant Northern California, Inc. in an amount not to exceed \$48,100 through funds that are available in CIP 8093 (Telecommunications Infrastructure).

- * 13. **Authorize the City Manager to Execute a Joint Use Agreement: Santa Clara Valley Water District, Coyote Creek Trail Reach 1 (Project No. 4206) (Staff Contact: Greg Armendariz, 586- 3401)**

Background: Coyote Creek Trail, Reach 1 is included in the current five-year Capital Improvement Program (CIP). The completed project will provide an all-weather pedestrian and bicycle trail along Coyote Creek, extending from North McCarthy Boulevard at Coyote Creek to south of Ranch Drive. The trail will be constructed primarily on existing levees along the east side of the creek that are operated by the Santa Clara Valley Water District (District). The District customarily issues a Joint Use Agreement to cities that wish to implement trails in creek corridors within the District's jurisdiction. This agreement provides for the City to be responsible for operation and maintenance of the trail amenities upon completion of construction of the trail, currently scheduled for mid 2005. Estimated annual maintenance costs are approximately \$18,000. The proposed agreement is similar to the Joint Use Agreement approved by the City Council for Berryessa Creek in 2002.

Recommendation: Authorize the City Manager to execute a joint use agreement amendment with Santa Clara Valley Water District for Coyote Creek Trail Reach 1, subject to approval as to form by the City Attorney.

*** 14. Approve Permittee Dedication and Improvement Agreement and Improvement Plans For 600 Evans Road (Project No. 2285) (Staff Contact: Mehdi Khaila, 586-3328)**

Background: On March 20, 2001, the City Council approved the construction of a hillside home at 600 Evans Road. As part of this approval, the Permittee was required to construct necessary public improvements along its frontage on Evans Road consisting of, curb and gutter, pavement, street lights, signage and striping, fire hydrant, storm drain, sewer service, and water services.

The improvement plans are ready for approval. Copies of the Permittee Dedication and Improvement Agreement and excerpts of the improvement plans are included with the Council agenda packet. A complete set of the improvement plans are available for review in the office of the City Engineer.

Recommendation:

1. Approve public improvement plans.
2. Approve the Permittee Dedication and Improvement Agreement and authorize the City Manager to execute the same, subject to the approval as to form by the City Attorney.

*** 15. Authorize City Manager To Execute Agreement Amendment: Sandis Humber Jones, Alignment Alternative Study, Pedestrian/Bicycle Overcrossing, Project No. 4213 (Staff Contact: Mike McNeely, 586-3301)**

Background: On February 5, 2004, the City Council awarded a consultant contract to Sandis Humber Jones to provide an alignment alternatives study for a pedestrian/bicycle overcrossing of Union Pacific Railroad, in the vicinity of the Great Mall.

Staff now recommends that Sandis Humber Jones, together with their subconsultant RBF Consulting, perform professional environmental consulting services within the project boundary. Services will include an environmental document required to clear the project. It is assumed at this time, that a CEQA negative declaration and a NEPA categorical exclusion will be sufficient. Staff has negotiated a fee for these services not to exceed \$82,075.00, which is considered reasonable for the work. There are sufficient funds in the current project budget for these services.

Recommendation: Authorize the City Manager to execute the agreement amendment with Sandis Humber Jones, in the amount of \$82,075.00, subject to approval as to form by the City Attorney.

*** 16. Authorize City Manager to Execute Amendment Agreement: SSA Landscape Architects, Inc., Hetch-Hetchy Landscape Renovation (Project No. 5053) (Staff Contact: Doug DeVries, 586-3313)**

Background: On June 17, 2003, City Council approved a consultant agreement with SSA Landscape Architects, Inc. (SSA) to provide professional design services for landscape renovation of the Hetch-Hetchy area, located between Washington Drive and Coelho Street. Since then, SSA developed concept plans that incorporate low maintenance, modest landscaping and all-weather pathways. An updated San Francisco Public Utilities Commission (SFPUC) Land Use Permit has also been obtained. Staff reviewed these plans and the updated SFPUC permit and determined that the concept and project scope will require further refinement to address the requirements of the updated SFPUC permit. Staff is now ready to move forward with the design.

A proposal has been submitted from SSA Landscape Architects, Inc., to complete the design for a fee in the amount of \$25,000, which is considered reasonable for this work. There is sufficient budget in the project account to cover this cost.

Recommendation: Authorize the City Manager to execute the amendment agreement with SSA Landscape Architects, Inc., in the amount of \$25,000, subject to approval as to form by the City Attorney.

*** 17. Authorize the City Manager to Execute the Agreement with Raines, Melton, and Carella Consultants for a Sewer Flow Allocation Study (Staff Contact: Darryl Wong, 586-3345)**

Background: In accordance with the regional wastewater treatment agreement, an annual review of current wastewater discharge from the tributary agencies (including Milpitas) is performed to identify each agency's remaining treatment plant capacity. Staff has determined that Milpitas will probably need to purchase additional capacity to accommodate anticipated future wastewater discharge. A study is recommended to review existing methodologies and possible alternatives to determine if an increase in remaining capacity can be validated. The consulting firm of Raines, Melton, & Carella is recommended for this work due to their past work developing the flow projection model for the water pollution control plant and the Milpitas wastewater flow projections for the Milpitas master plan. The fee is considered reasonable for the work involved, and there are sufficient funds in the engineering budget.

Recommendation: Authorize the City Manager to execute the consultant agreement with Raines, Melton & Carella Consultants, in the amount of \$28,520.00, subject to approval as to form by the City Attorney.

*** 18. Award Construction Contract: Water System Air Relief Valve Modifications – Phase I, Project No. 7086, (Staff Contact: Doug DeVries, 586-3313)**

Background: On July 6, 2004, the City Council approved the project plans and specifications and authorized the advertisement of the project for bids. The work involves retrofitting approximately forty (40) existing air relief valves from below ground level to above ground level to comply with State Code, Title 22, Chapter 16, as mandated by the California Department of Health Services (DOHS).

The project was advertised and sealed proposals were opened on Thursday, August 26, 2004. The proposals ranged from \$101,125.33 to 210,690.00. The Engineer's estimate for the work was \$140,990.00. The low bidder was San Jose Water Company (SJWC). However, SJWC did not possess a valid license at the time the project was bid, which is required by the Public Contracts Code. Staff therefore recommends that SJWC's bid be rejected and the project be awarded to the second low bidder, West Valley Construction Company in the amount of \$154,615.00. There are sufficient funds in the project budget for all of these expenses.

Recommendation:

1. Reject the bid of San Jose Water Company (low bidder) for non-compliance with the Public Contracts Code.
2. Award the contract to West Valley Construction (second low bidder) in the amount of \$154,615.00.

- * 19. **Authorize City Manager to Execute Agreement Amendment: Lowney Associates, Main Sewage Pump Station Demolition and Site Improvements, Phase I, Project No. 6079 (Staff Contact: Greg Armendariz, 586-3401)**

Background: On April 6, 2004, the City Council awarded a consultant contract to Lowney Associates for professional services relating to hazardous material abatement, testing and geotechnical engineering needed to design demolition and site improvements at the City's main sewage pump station. The scope of work included those services needed to complete the design phase. Design has been completed and the project is ready for construction. Staff recommends an amendment to the Lowney Associates contract to perform construction phase services for the project. The scope of construction phase services includes technical and engineering support, as well as assistance ensuring compliance with the geotechnical and hazardous material remediation aspects of the project. Staff has negotiated a scope and fee for an agreement amendment for these services not to exceed \$24,900.00, which is considered reasonable for the work. There are sufficient funds in the project budget to cover this additional expense.

Recommendation: Authorize the City Manager to execute the agreement amendment with Lowney Associates, in the amount of \$24,900.00, subject to approval as to form by the City Attorney.

- * 20. **Award Construction Contract to the Lowest Responsive Bidder, ICONCO, Inc., and Waive Minor Bid Irregularities, and Reject the Lowest Bid by Peak Engineering as Nonresponsive: Main Sewage Pump Station Demolition and Site Improvements Phase I, Project No. 6079 (Staff Contact: Greg Armendariz, 586-3401)**

Background: On July 6, 2004, the City Council approved the project plans and specifications and authorized advertising for bid proposals. This project involves demolition and removal of abandoned sewage treatment facilities at the City's Main Sewage Pump Station site at 1425 North McCarthy Boulevard. The work will include demolition and removal of the abandoned chlorine contact basin, sludge basin, chlorine building, operations building, and inactive utilities and appurtenances, as well as site regrading and related utilities work. Several of the structures contain significant amounts of hazardous materials that require special handling and disposal. The Engineer's estimated construction cost for the base scope of work was \$614,000.

The project was advertised and sealed bid proposals were opened on September 8, 2004. The bid proposals ranged from \$410,000 to 957,000. The apparent low bidder was Peak Engineering of Oakland. Peak's proposal form did not include a signed copy of one of the addenda that was issued. Failure to acknowledge receipt of all addenda causes a bid to be considered nonresponsive. This firm also did not attend a required pre-bid site visit with staff. Therefore, staff recommends rejection of Peak Engineering's proposal as nonresponsive.

The lowest responsive bid was submitted by ICONCO, Inc. of Oakland, for a base bid cost of \$517,000. ICONCO's proposal contained minor irregularities that are not deemed substantive and can be waived. Staff recommends that a construction contract be awarded to ICONCO, Inc. as the lowest responsive bidder and that minor bid irregularities in ICONCO's proposal be waived.

The bid schedule included the base bid which included the work noted above, and three bid alternate items. Staff recommends adding bid alternate items 1 and 2 to the contract, which are cost effective and facilitate the next phase of work. The bid prices for these two items are lower than the Engineer's estimate and are considered reasonable for the work that is needed. Since bid

alternate item 3 does not appear cost competitive, staff recommends not including this work, which can be deferred to a later phase.

The total recommended contract award is \$695,000 for the base scope of work plus bid alternate items 1 and 2. Staff also recommends authorizing a construction contingency allowance of \$140,000 due to the unknowns involving hazardous material remediation. The nature of this type of work typically requires an allowance of this magnitude to address unknown field conditions. Sufficient funds are available in the project budget to award this project with the recommended bid alternates and provide the recommended contingency allowance.

Additional funding will be needed to implement the next phase of pump station site improvements, planned to include construction of a new operations building, paving, storage, access, drainage improvements, and utilities work. The next phase will allow public works storage sites on Main St. and Winsor St. be relocated to the pump station, facilitating construction of the new Library. Staff will provide more information as design of these improvements proceeds.

Recommendation:

1. Reject the low bid proposal from Peak Engineering as nonresponsive.
2. Award a construction contract to the lowest responsive bidder, ICONCO, Inc., in the amount of \$695,000 (including bid alternate items 1 and 2).
3. Waive minor bid irregularities in ICONCO's bid proposal.

*** 21. Award Bid for Intersection Video Detection Systems (Project No. 4223) (Staff Contact: Lou Zenzen, 586-3161)**

Background: Staff requested quotations from the only three intersection video detection system distributors in Northern California to replace damaged in-ground pavement loop system at the Jacklin/So Park Victoria intersection and failing pavement loops at the McCarthy/Bellew intersection. The new video system detects vehicles in all traffic lanes in all directions and sends information to the traffic signal controller to better manage traffic flow. The systems will be installed and maintained by Street Maintenance staff. The following is the recap of bids received from the two vendors that responded including tax, freight and training:

<u>Bidder</u>	<u>Amount</u>
Synchronex, Inc.	\$38,970.00
JAM Services, Inc.	\$49,590.00

There are sufficient funds available in the Pavement Improvement Program (Proj. 4223) project budget for the purchase of the video detection systems.

Recommendation: Award the bid for the purchase of the intersection video detection systems to the lowest bidder, Synchronex, Inc. in the amount of \$38,970.00.

*** 22. Authorize Purchase of Replacement Public Safety Radios (Project No. 8125) (Staff Contact: Lou Zenzen, 586-3161)**

Background: Staff issued a Request for Quotation for 22 portable two-way communication radios and accessories for the Fire Department. These radios are scheduled and budgeted for replacement this fiscal year in the Radio Replacement Plan Project. Bid packets were sent to eight western region suppliers and the western distributor of the Motorola equipment on Purchasing's bidder list. Seven responded with total prices ranging from \$27,528.33 to \$31,050.32. The following is the recap of the three lowest quotes received including tax and freight:

<u>Bidder</u>	<u>Amount</u>
Bearcom Wireless Worldwide	\$27,528.33

Total Radio, Inc.	\$27,795.51
Motorola, Inc.	\$28,910.51

There are sufficient funds in the Radio Replacement Plan project (Proj. 8125) for the purchase of the radios and accessories.

Recommendation: Award the bid for the purchase of the communication radios and accessories to the lowest bidder, Bearcom Wireless Worldwide, in the amount of \$27,528.33 including tax and shipping.

XXII. CLAIMS AND DEMANDS

*** 23. Approve Payment Requests: Miscellaneous Vendors/Contractors (Staff Contact: Lou Zenzen, 586-3161)**

Background: In accordance with direction given by City Council at its August 15, 1995, meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$12,725.00 to West Valley Sanitation District to manage a study to identify available treatment plant capacity that could be purchased by the City of Milpitas for future City development for the Utility Engineering Section. (Funds are available from the Engineering Division's Sewer Fund operating budget for this service.)
2. \$9,813.48 to the Department of California Highway Patrol for the City's share of traffic enforcement of High Occupancy Vehicle Lanes (HOV) by the Highway Patrol on the county expressways (Montague). (Funds are available from the Police Department operating budget for this service.)
3. \$5,706.68 to Catherine Harris, Esq. for professional services for a grievance case for the Human Resources Department. (Funds are available from the Human Resources Department operating budget for this service.)
4. \$7,865.78 to American Portable Storage for the purchase of two used 20 foot shipping containers with modifications and delivery to provide secure storage of Public Works equipment. Storage space is needed due to demolition of operations building and garage at the old treatment plant. American Portable Storage submitted the lowest quote of three suppliers. (Funds are available from the Main Sewer Pump Station Site Improvements (Proj. 6079) project budget for this purchase.)
5. \$6,314.33 to Always Under Pressure for the purchase of a gas operated hot water pressure washer for the Facilities Maintenance Section for special cleaning needs at the Civic Center Plaza. Always Under Pressure submitted the lowest quote of three suppliers. (Funds are available from the Equipment Replacement Fund budget for this purchase.)

Recommendation: Approve the miscellaneous payment requests.

XXIII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, OCTOBER 5, 2004, AT 7:00 P.M.**

CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
September 7, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

- 1. Conference with Labor Negotiators**
(Pursuant to Government Code Section 54957.6)
Agency Designated Representatives: Eddie Kreisberg and Cherie Rosenquist
Employee Organization: LIUNA
- 2. Conference with Real Property Negotiators**
(Pursuant to Government Code Section 54956.8)
Property: 110 Winsor Street
Agency Negotiator: Thomas J. Wilson
Negotiating Party: KDX Services and Keith Dimmick
Under Negotiation: Price and terms for acquisition of property interest
- 3. Conference with Legal Counsel - Existing Litigation**
(Pursuant to Government Code Section 54956.9)
City of Milpitas vs. Donald J. Kennedy, et al.
Santa Clara County Superior Court Case No. 104CV023573
- 3. Conference with Real Property Negotiators**
(Pursuant to Government Code Section 54956.8)
Property: 94, 110 and 120-150 Winsor St. (APNs 028-24-014 and 028-24-015) and 116-130 North Main St. (APN 028-024-026) and (APN 028-024-020)
Negotiating Parties: Milpitas Redevelopment Agency and Dorothy A. & Ruth A. Winsor
Agency Negotiators: Thomas J. Wilson and Blair King
Under negotiation: Terms and Conditions for disposition or lease.
- 4. Conference with Real Property Negotiators**
(Pursuant to Government Code Section 54956.8)
Property: 86 North Main Street, APN 028-024-025
Negotiating Parties: Milpitas Redevelopment Agency and Juan J. Rodriguez and Rose E. Rodriguez Trustees of the The Juan and Rose Rodriguez Family Trust, dated December 18, 2001
Agency Negotiators: Thomas J. Wilson and Blair King
Under negotiation: Terms and Conditions for disposition or lease.
- 5. Conference with Real Property Negotiators**
(Pursuant to Government Code Section 54956.8)
Property: APN #022-08-042 (vacant property south of DeVries/Smith House)
Negotiating Parties: City of Milpitas/Redevelopment Agency and County of Santa Clara
Agency Negotiator: Thomas J. Wilson
Under Negotiation: Terms and Conditions for Disposition or Lease
- 6. Conference with Real Property Negotiators**
(Pursuant to Government Code Section 54956.8)
Property: Vacant Property N. Main Street (APN No. 2208003)
Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza
Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

7. Conference with Real Property Negotiators

(Pursuant to Government Code Section 54956.8)

Property: 163 North Main Street, APN #022-08-041

Negotiating Parties: Mid-Peninsula Housing Coalition, a California

Non-Profit Public Benefit Corporation, City of Milpitas, and Milpitas Redevelopment Agency

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for disposition or lease

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES: July 29, 2004, and August 17, 2004

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

Certificates of Appointment:

- Barbara Ebright, Senior Advisory Commission, Alternate #2
- Lynne Estandarte, Library Advisory Commission, Alternate #2

Proclamations:

- Patriot Day 2004, September 11, 2004
- Pollution Prevention Week, September 19-25, 2004

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. MOMENTS OF REFLECTION

XI. APPROVAL OF AGENDA

XII. CONSENT CALENDAR (Items with Asterisks)

XIII. PUBLIC HEARINGS

- 1. Approve Entertainment Event Permit for Wings of Rogallo to Hold a Silent Air Show at Ed Levin Park (Staff Contact: Gail Blalock, 586-3001)**
- 2. Approve Entertainment Event Permit for Northern California Chinese Athletic Federation to Hold a Chinese Moon Festival Concert at Milpitas Square on September 18, 2004 (Staff Contact: Gail Blalock, 586-3001)**

3. **Approve The Amended Density Bonus, “S” Zone Approval Amendment No. SA2004-7, Use Permit Amendment No. UA2004-2 And Land Exchange Agreement For Apton Plaza – 230 North Main Street (Staff Contact: Staci Pereira, 586-3278)**

XIV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

- RA1. Call to Order by the Mayor**
- RA2. Roll Call**
- RA3. Approval of Minutes: August 17, 2004**
- RA4. Approval of Agenda and Consent Calendar (items with asterisks)**
- RA5. City of Milpitas Unaudited Financial Status Report For The Fiscal Year Ended June 30, 2004 (Staff Contact: Emma Karlen, 586-3145)**
- RA6. Approve Preliminary Site Plan for Development of a Senior Housing Project at 163 North Main Street Including Construction of a New 4-Story Building and the On-Site Preservation and Relocation of the DeVries/Smith House (Staff Contact: Blair King, 586-3060)**
- RA7. Approve the Execution of a Memorandum of Understanding Between the Milpitas Redevelopment Agency, the City Of Milpitas, and the County of Santa Clara for the Development of a Health Center on APN 022-08-042, (Vacant Land Southerly of the DeVries/Smith Site) (Staff Contact: Blair King, 586-3060)**
- RA8. Approve the Terms and Conditions of the Purchase by the Redevelopment Agency of Eight Properties Located within Redevelopment Project Area one from the City of Milpitas, and the Sale by the City of Milpitas to the Redevelopment Agency of these same Properties, and the Lease of Six of these Properties from the Redevelopment Agency to the City of Milpitas (Staff Contact: Blair King, 586-3060)**
- RA9. Progress Report on Library Design, Project No. 8162 (Staff Contact: Mark Rogge, 586-3403)**
- *RA10. Adopt Resolution of the Milpitas Redevelopment Agency Approving the Execution of an Owner Participation Agreement with Apton Properties (Staff Contact: Felix Reliford, 586-3071)**
- *RA11. Approve Fiscal Year 2003-04 Year-End Budget Adjustments and the Closure of Inactive Funds (Staff Contact: Emma Karlen, 586-3145)**
- *RA12. Accept the 2004-2005 Final Budget and the 2004-2009 Final Capital Improvement Program (Staff Contact: Emma Karlen, 586-3145)**
- *RA13. Authorize the City Manager to Terminate the Professional Services Agreement with Munifinancial and Authorize Substitute Agreements with Willdan for Services Related to Midtown Parking Strategies and David Taussig & Associates for Services Related to Assessment and Maintenance Strategies (Staff Contact: Blair King, 586-3060)**
- RA14. Agency Adjournment**

XV. REPORTS OF OFFICERS AND BOARDS

City Council

4. **Consideration of Potential “Sunshine” Type Ordinance Related to Identifying Employee Compensation Information as a Public Record: Mayor Esteves (Staff Contact: Steve Mattas, 586-3040)**
5. **Consider Library Service Reductions: Santa Clara County Library Joint Powers Authority: Vice Mayor Dixon (Staff Contact: Cynthia Maxwell, 586-3282)**

Arts Commission

- * 6. **Approve the Art in Your Park Project Roles and Responsibilities For the Milpitas Alliance for the Arts and the City of Milpitas, as Recommended by the Arts Commission (Staff Contact: Kathleen Yurchak, 586-3209)**

Sisters Cities Commission

- * 7. **Approve Budget Request from the Sister Cities Commission for Services Supporting 2004 Dagupan City Municipal Exchange Visit (Staff Contact: Leslie Stobbe, 586-3352)**

XVI. UNFINISHED BUSINESS

8. **Approve Gateway Sign Pilot Project Conceptual Design and Location (Staff Contact: Tambri Heyden, 586-3280 and Mike McNeely, 586-3301)**
- * 9. **Odor Control Comprehensive Action Plan Update (Staff Contact: Darryl Wong, 586-3345)**

XVII. NEW BUSINESS

10. **Appointment of Ethics Evaluators to Serve on the Ethics Evaluation Panel and Authorization of the City Manager to Negotiate Consulting Agreements with Ethics Evaluators (Staff Contact: Tambri Heyden, 586-3280)**
- * 11. **Approve Filling Vacant Positions and Authorize Budget Request: Maintenance Worker I/II, Maintenance Worker III, Public Services Assistant (Staff Contact: Cherie Rosenquist, 586-3082)**
- * 12. **Approve Cancellation of the July 19, 2005, City Council Meeting (Staff Contact: Gail Blalock, 586-3001)**
- * 13. **Response to Grand Jury Report – Inquiry into the Board Structure and Financial Management of the Valley Transportation Authority (Staff Contact: Thomas Wilson, 586-3050)**

XVIII. ORDINANCES

- * 14. **Adopt Ordinance No. 263 Adding a New Chapter 19 to Title V of the Milpitas Municipal Code Prohibiting the Use of Vehicles for Human Habitation (Staff Contact: Dennis Graham, 586-2502)**

XIX. RESOLUTIONS

- * 15. **Adopt Resolution Approving Milpitas Fire Stations as Safe Havens under the California Safely Surrender Baby Law (Staff Contact: Bill Weisgerber, 586-2811)**
- * 16. **Adopt Resolution Amending Exhibit A, List of Designated Disclosure Positions, of the City of Milpitas Conflict of Interest Code (Staff Contact: Gail Blalock, 586-3001)**

XX. BIDS AND CONTRACTS

- * 17. **Approve Budget Appropriation and Purchase: Conservation Grant Funding; School Recycling Assemblies (Staff Contact: Leslie Stobbe, 586-3352)**
- * 18. **Authorize the City Engineer to Execute Authorization Letter: SBC Communications, Inc., Abel/Calaveras Right Turn Lane, Project No. 4186 (Staff Contact: Greg Armendariz, 586-3401)**
- * 19. **Approve Consultant Agreement Amendment: Raines, Melton, and Carella , Incorporated, Wet Weather Monitoring Evaluation, Project 6102 (Staff Contact: Darryl Wong, 586-3345)**
- * 20. **Authorize the City Engineer to Execute a Contract Change Order: Interim Senior Center Kitchen and Interior Improvements, Project No. 8151, (Staff Contact: Jorge Bermudez, 586-3404)**
- * 21. **Authorize the City Manager to Execute the Agreement: Olivia Chen Consultants: Berryessa Pump Station Improvements (Project No. 8138) (Staff Contact: Doug DeVries, 586-3313)**
- * 22. **Award Bid for Purchase of Replacement Police Investigation Vehicles and Parks Van (Staff Contact: Lou Zenzen, 586-3161)**
- * 23. **Award Bid for Annual Public Works Garment Purchases (Staff Contact: Lou Zenzen, 586-3161)**
- * 24. **Award Bid for Purchase of Replacement Police Patrol Vehicles (Staff Contact: Lou Zenzen, 586-3161)**
- * 25. **Authorize the City Engineer to Execute a Contract Change Order: 2004 Street Resurfacing Project, Project Nos. 4182 and 4223, (Staff Contact: Doug DeVries, 586-3313)**

XXI. CLAIMS AND DEMANDS

- * 26. **Authorize the Purchase of a Replacement Mower (Staff Contact: Lou Zenzen, 586-3161)**
- * 27. **Approve Payment Requests: Miscellaneous Vendors/Contractors (Staff Contact: Lou Zenzen, 586-3161)**

XXII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, SEPTEMBER 21, 2004, AT 7:00 P.M.**

CITY OF MILPITAS
Agenda Reports
Milpitas City Council Meeting
September 7, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

XIII. PUBLIC HEARINGS

1. Approve Entertainment Event Permit for Wings of Rogallo to Hold a Silent Air Show at Ed Levin Park (Staff Contact: Gail Blalock, 586-3001)

Background: The Wings of Rogallo Hanggliding Club has submitted an application for an Entertainment Event Permit to hold a Silent Air Show on Sunday, September 19, 2004, from 8:00 a.m. to 3:00 p.m. at Ed Levin County Park. The applicant has also applied for and received a permit from the Santa Clara County Parks and Recreation Department. The event will include hanggliding and paragliding acts at the non-profit "silent" air show. The application has been reviewed and approved by the various City departments and the public hearing advertised as required by the City Ordinance.

Recommendation:

1. Close the public hearing.
2. Approve Entertainment Event permit for Wings of Rogallo to hold a Silent Air Show on September 19, 2004, at Ed Levin Park, subject to the conditions from staff and receipt of a certificate of insurance.

2. Approve Entertainment Event Permit for Northern California Chinese Athletic Federation to Hold a Chinese Moon Festival Concert at Milpitas Square on September 18, 2004 (Staff Contact: Gail Blalock, 586-3001)

Background: The Northern California Chinese Athletic Federation has submitted an application for an Entertainment Event Permit to hold a Chinese Moon Festival Concert on Saturday, September 18, 2004, from 5:00 p.m. to midnight at the Milpitas Square parking lot on Barber Lane. The application has been reviewed and approved by the various City departments and the public hearing advertised as required by the City Ordinance.

Recommendation:

1. Close the public hearing.
2. Approve Entertainment Event permit for the Northern California Chinese Athletic Federation to hold a Chinese Moon Festival Concert on Saturday, September 18, 2004, at the Milpitas Square Shopping Center parking lot, subject to the conditions from staff and receipt of a certificate of insurance.

3. Approve The Amended Density Bonus, "S" Zone Approval Amendment No. SA2004-7, Use Permit Amendment No. UA2004-2 And Land Exchange Agreement For Apton Plaza – 230 North Main Street (Staff Contact: Staci Pereira, 586-3278)

Background: This item was continued at the August 17, 2004, City Council meeting in order to allow additional time for staff and the applicant to come to agreement on the Conditions of Approval, Land Exchange Agreement and Owners Participation Agreement for the Apton Plaza project. Applications SA2004-7 and UA2004-2 are for modifications to the previously approved mixed use development, originally approved by the City Council on July 1, 2003. The site and design modifications are summarized as *reductions* to:

- a. The number of residential units from 102 to 96;

- b. The amount of density bonus requested that exceeds the maximum density by 7 units rather 13 units originally granted;
- c. The total retail floor area from 6,000 to 3,000 sq. ft.;
- d. The number of stories from 5 to 4 and overall building height from 60 to 56 feet.

Other minor site modifications include the relocation of the garage entrance from Railroad Court to N. Main Street and the trash enclosure from the southeast corner off of Weller Lane to the northeast corner off of Railroad Court. As amended, the project consists of a 4-story mixed-use building with 3,000 sq. ft. of retail space and 96 residential units.

Design of the development involves requests for a deviation from the MXD-TOD (Mixed Use Transit Oriented Development Overlay District) setback regulations, a parking reduction of 27 spaces (2 for retail and 25 for guest use), an 8% density bonus and a vacation of a portion of Weller Lane, North Main Street and Railroad Court, as well as a land exchange with the City. Details regarding the project design are discussed in the staff report and depicted in the plans in the Council's agenda packet.

The 8% density bonus the applicant seeks exceeds the maximum density of 40 units per acre allowed under the Mixed Use land use designation with TOD overlay for a density of 43 units per acre. The applicant has agreed to designate 19 of the units as affordable (9 very low income and 10 moderate income) to meet the density bonus requirements and Midtown Specific Plan affordable housing policies. The nine units reserved for very low income households qualify the project for a density bonus.

A Negative Declaration (EIA No. EA2003-1), a statement briefly describing the reasons that the proposed project will not have a significant effect on the environment, was completed for this project and adopted by the City Council on July 1, 2003. The amendments to the project will not result in any environmental impact not already considered in the adopted Negative Declaration. However, as a result of recent environmental testing performed on a portion of the property that the City is acquiring from the landowner as part of the land swap, staff has added a new condition (No. 5) that requires the applicant to complete a Phase II environmental assessment of the project site.

Because the density bonus requests require Council approval, all other Apton Plaza applications reviewed by the Planning Commission are being brought forward to Council as a package. The Planning Commission reviewed the amended project and recommended approval at its meeting on May 26, 2004. As a result of further discussion with the applicant in recent months since the Planning Commission meeting, other conditions have been modified and a new condition has been added (No. 5). The applicant is in agreement with all of the changes to the conditions.

Recommendation: Approve the amended Density Bonus, "S" Zone Approval Amendment No. SA2004-7, Use Permit Amendment No. UA2004-2 and Land Exchange Agreement for Apton Plaza.

XIV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor

RA2. Roll Call

RA3. Approval of Minutes: August 17, 2004

RA4. Approval of Agenda and Consent Calendar (items with asterisks)

RA5. City of Milpitas Unaudited Financial Status Report For The Fiscal Year Ended June 30, 2004 (Staff Contact: Emma Karlen, 586-3145)

Background: The Finance Department will present a review of the City's unaudited financial status for the fiscal year ended June 30, 2004.

Recommendation: Receive staff report.

RA6. Approve Preliminary Site Plan for Development of a Senior Housing Project at 163 North Main Street Including Construction of a New 4-Story Building and the On-Site Preservation and Relocation of the DeVries/Smith House (Staff Contact: Blair King, 586-3060)

Background: On May 18, 2004, the City Council/Agency Board authorized a period of exclusive negotiation with Mid-Peninsula Housing Coalition for the purpose of developing plans, concepts, and financial proforma for the development of a minimum, 98-unit senior affordable housing project at 163 North Main Street, the DeVries/Smith House site. Staff and Mid-Peninsula have explored various preliminary site plans. This is to provide Council with a status report and to request Council direction regarding the preliminary site plan.

City staff and Mid-Peninsula are recommending a conceptual plan of a 4-story building that would provide 104 units of affordable senior housing and the on-site preservation and relocation of the DeVries/Smith House. The conceptual plan envisions 94 one-bedroom units and nine two-bedroom units, along with a two-bedroom manager's unit. The one-bedroom units will be approximately 580 square feet in size, and the two-bedroom units approximately 900 square feet. All units will be equipped with full kitchens. Rents are targeted to extremely low and very low-income seniors earning 25% to 40% of area median income. This translates to rents ranging between \$462 to \$760 per month for one-bedroom units and \$535 to \$893 for two-bedroom units.

Mid-Peninsula is experienced with incorporating historic structures into affordable housing developments, specifically the Italian Gardens Project in San Jose. Mid-Peninsula and staff believe that the DeVries/Smith structure can add to the development and serve as an asset. The foundation of the house needs replacement. Relocating the structure on-site is no more expensive than rehabilitation at its present location. It is proposed that the structure be moved southeasterly, where it could continue to be oriented on Main Street or rotated 90 degrees facing onto a courtyard. It is envisioned that an entry court will be developed around the structure to create a setback from the main senior housing complex.

The cost is preliminarily estimated to be approximately \$1 million to restore and preserve the structure. The proposed conceptual plans and proforma allow the DeVries/Smith house to be used and provides a revenue stream for maintenance. Additionally, it assures the rehabilitation of the structure.

Due to the aggressive development schedule that envisions certification of the environmental document no later than January or February 2005 and commencement of construction in 2006, direction is needed with regard to the development of preliminary conceptual site plans at this time.

The recommended conceptual site plan is attached, Scheme "F" showing orientation into a courtyard, Scheme "F1" showing orientation to Main Street.

Recommendation: Approve the Preliminary Site Plan for Senior Housing Project including construction of a new 4-story building and the preservation and relocation on-site of the DeVries/Smith House.

RA7. Approve the Execution of a Memorandum of Understanding Between the Milpitas Redevelopment Agency, the City Of Milpitas, and the County of Santa Clara for the Development of a Health Center on APN 022-08-042, (Vacant Land Southerly of the DeVries/Smith Site) (Staff Contact: Blair King, 586-3060)

Background: Approximately 12 months ago, staff learned that the County of Santa Clara was seeking to acquire property in Milpitas to construct a large 57,000 square foot primary care health center with parking. Concerned that the County's acquisition of property would remove taxable property from the City's tax base, discussion ensued between City and County staff with regard to a suitable location on which to develop a County Health Center. Early in the discussion, a vacant 1.16-acre City owned site along North Main Street, south of the DeVries/Smith House was identified. The site is well served by public transportation, is currently off the tax roles, and through the aggregation of development of the library and Senior Housing project could assist to serve as an economic development catalyst by anchoring the north end of Midtown development efforts. On March 16, 2004, the City/Agency authorized an appraisal of the value of the property for possible sale to the County. On April 5, 2004, the City Council authorized staff to develop a framework of an agreement for sale of the site and the development of a County Health Center. Staff is now recommending the adoption of a proposed Memorandum of Understanding (MOU) between the City/Agency and County to memorialize the agreements reached to date.

The proposed transaction between the City/Agency and County is a two-step transaction. The first step is the adoption of the proposed non-binding MOU; the second step is the development of a comprehensive Disposition and Development Agreement (DDA) that would be acted upon in concert with the certification of the Environmental Document for the collective north Main Street developments. Certification of the Environmental Impact Report (EIR) is projected to occur in early 2005. A public hearing must be held prior to the adoption of a DDA.

In brief, the following are the essential business terms proposed:

1. The County will purchase the property at fair market value based upon an appraisal by Hulberg & Associates up to a not-to-exceed amount of \$2,020,000.
2. The County will pay for the construction of 275 parking stalls, which the City will construct, with a not-to-exceed amount of \$6,875,000.
3. The County will pay actual maintenance costs for 275 parking stalls.
4. The County will pay usual and customary utility connection fees, traffic impact fees, and planning application and processing fees.
5. The City will pay for improvements for which it has previously approved a capital improvement project, for example, Main Street, and not charge the County for these improvements.
6. The County will develop an approximately 60,000 square foot, 3-story, primary health center that will provide medical services including adult medicine and gerontology, pediatrics, obstetrics & gynecology, dentistry, clinical lab, pharmacy, and administrative functions to residents of Milpitas.

The proposed health center is one of four scheduled for development or expansion by the County. The County has previously approved development and/or expansion of health centers in San Jose, Sunnyvale, and Gilroy.

Recommendation: Approve the execution of a Memorandum of Understanding between the Redevelopment Agency, City of Milpitas, and County of Santa Clara for the development of a Health Center on Property identified as APN 022-08-042, (vacant land southerly of the DeVries/Smith site).

RA8. Approve the Terms and Conditions of the Purchase by the Redevelopment Agency of Eight Properties Located within Redevelopment Project Area one from the City of Milpitas, and the Sale by the City of Milpitas to the Redevelopment Agency of these same Properties, and the Lease of Six of these Properties from the Redevelopment Agency to the City of Milpitas (Staff Contact: Blair King, 586-3060)

Background: On April 6, 2004, staff broached the possibility, as part of the continuing process of implementation of the restructured and expanded Redevelopment Project Area, of the Agency acquiring title to eight sites owned by the city within Redevelopment Project Area One. The Council/Board authorized staff to obtain fair market appraisals in order to determine the value of the subject properties.

It is now proposed that Agency/City hold a public hearing and approve the transfer of title of the subject eight parcels from the City to the Agency. Health and Safety Code Section 33679 provides authorization for the Redevelopment Agencies to purchase public facilities.

The 2003 adoption of the Eighth Amendment to the Redevelopment Plan provided the Agency with the financial capacity and opportunity to acquire title to eight City-owned properties within Project Area One. There are a variety of management practices and reasons for the Agency to acquire title to the identified parcels including the following:

1. Acquisition by the Agency allows the Agency to properly move forward with contemplated near and long-term capital improvement projects such as the library, senior center, senior housing, community center rehabilitation, fire station expansions, police dispatch improvements, fire dispatch improvements, and other community projects. Agency acquisition of the facilities ensures a coordinated capital improvement program and proper oversight of tax increment funds.
2. Pursuant to the technical requirements of the Health and Safety Code, specifically 33675, "Procedure for allocation and payment of taxes to Agency," the acquisition of the properties in the manner being recommended by staff will strengthen the Agency's position when it files its mandated annual statement to receive tax increment funds.
3. The property transaction is a legal mechanism to allow the Agency to provide a financial benefit to the City.

In accordance with Agency authorization provided April 6, 2004, certified appraisers have established the purchase prices for the subject properties. The list of the eight subject properties and their appraised values are as follows:

1. APN 022-08-041 - 163 N. Main St. (DeVries House) \$2,000,000.
2. APN 022-08-042 - (The property south of the DeVries House) \$2,020,000.
3. APN 028-24-019 - 160 N. Main St. (Old Senior Center) \$2,640,000.
4. APN 022-02-047 - 1275 N. Milpitas (Police Station) \$8,500,000.
5. APN 028-12-11 - 455 E. Calaveras Blvd. (Portion of Civic Center property excluding City Hall) \$5,940,000.
6. APN 086-11-008 - 777 S. Main St. (Fire Station 1) \$6,240,000.
7. APN 036-13-033 - 45 Midwick (Fire Station 3) \$890,000.
8. APN 086-02-061 - 775 Barber (Fire Station 4) \$1,070,000.

(The summary of the appraisals is attached. The appraisals themselves are voluminous, approximately 3 inches thick, and may be reviewed in the office of the City Manager.)

The total purchase price is \$29,300,000. The Agency will pay the purchase price according to the terms of a promissory note. An initial payment of \$6,100,000 will be made prior to June 30, 2005, and the remaining balance of \$23,200,000 will be paid upon demand. The note shall bear interest at 10% or less.

Six of the eight properties will be leased back by the Agency to the City. The remaining two properties, the Devries site and the property adjacent to it, are subject to disposition agreements in the near future.

The acquisition of property and the development of new or replacement public facilities is specifically authorized in Section 300 of the adopted and amended Redevelopment Plan. The lease of property to the City is specifically authorized in Section 326 of the adopted and amended Redevelopment Plan.

The Redevelopment Plan authorizes the Agency to spend Tax Increment Funds in accordance with the Redevelopment Plan. The acquisition of the property is consistent with the Redevelopment Plan. No other funds, such as grant funds, inter-agency funds, or assessment district funds are available to the Agency for this proposed acquisition.

There will be no change of land use resulting specifically from the sale of property. Pursuant to Government Code 65402, on August 11, 2004, the Planning Commission found that the disposition of the property to the Redevelopment Agency was consistent with the City's adopted General Plan.

The purchase and sale of the property requires a public hearing that has been properly noticed. Resolutions have been drafted that contain the findings required for the purchase and sale. Such findings conclude that the purchase and sale is in the best interest of public health and welfare as indicated by the three justifications listed previously.

Recommendation:

1. Open Public Hearing, Accept Comments, Close Public Hearing.
2. Adopt a Resolution of the Redevelopment Agency authorizing the Use of Tax Increment Revenues for the Acquisition of Land and Public Improvements.
3. Adopt a Resolution of the City Council Authorizing the Sale of Property and the Use of Tax Increment Revenues for the Acquisition of Land and Public Improvements.
4. Adopt a Resolution of the Redevelopment Agency Authorizing the Lease of Agency Property to the City of Milpitas.
5. Adopt a Resolution of the City Council Authorizing the Lease of Agency Property by the City of Milpitas.

RA9. Progress Report on Library Design, Project No. 8162 (Staff Contact: Mark Rogge, 586-3403)

Background: The City Council approved the consulting services contract with Group 4 Architecture on August 3, 2004, for the design of the new library. The project is included in the Capital Improvement Program. Staff will provide a brief presentation on the progress of the design at the City Council meeting

Recommendation: Note receipt and file the progress report on the library design.

***RA10. Adopt Resolution of the Milpitas Redevelopment Agency Approving the Execution of an Owner Participation Agreement with Apton Properties (Staff Contact: Felix Reliford, 586-3071)**

Background: On June 17, 2003, the Redevelopment Agency authorized staff to enter into negotiations with Apton Properties for the development of a mixed-use project, that will include 3,000 square feet of commercial retail and a 96-unit apartment complex at the northeast corner of N. Main Street and Weller Lane. The Redevelopment Agency assistance was authorized specifically for the development of 19 deed-restricted affordable housing units (9 very low and 10 moderate income). The Council approved the Memorandum of Understanding (MOU) for financial assistance at its meeting on May 18, 2004.

The OPA sets out in detail the responsibilities of the Agency and the developer, specifically with regards to the timing, benefits, dispute resolution, and anti-discrimination requirements. Conditions and terms related to the land swap of properties to benefit the City's library project are also included in the OPA. The final OPA is now ready for Agency approval.

The OPA commits a total of \$1.2 million dollars in affordable housing funds for the development of 9 very low and 10 moderate-income units. Funds are pledged in the form of an \$852,560 grant related to affordable housing, permits and fees, and a \$378,000 loan for the affordable housing assistance. It is estimated that the proposed project, upon full build-out, will return \$107,800 annually in tax increment allowing the agency's contribution to be returned in less than eight years. Sufficient Low and Moderate Housing Funds are available.

At its meeting on May 26, 2004, the Planning Commission reviewed the proposed project and recommended approval of the OPA to the City Council. A copy of the OPA and the resolution for adoption are included in the Council's agenda packet. The participant has signed the OPA indicating acceptance.

Recommendation: Adopt Resolution of the Redevelopment Agency approving the execution of an Owner Participation Agreement with Apton Properties and making the certain findings.

***RA11. Approve Fiscal Year 2003-04 Year-End Budget Adjustments and the Closure of Inactive Funds (Staff Contact: Emma Karlen, 586-3145)**

Background: Finance Staff is in the process of closing the City and Redevelopment Agency books for Fiscal Year 2003-04. To maintain conformity with the City's budgeting policies and to prepare for the annual external audit, year-end budget adjustments are necessary to address items that were not known at the time the FY 03-04 budget was developed.

All funds, department and project budgets have been reviewed to determine necessary adjustments. A summary of the various budget transfers and appropriations is included.

The overall fiscal impact of the budget adjustments is a net \$467,000 reduction to the fund balances of various funds, including \$225,000 reduction to the General Fund balance.

It is recommended that four funds be closed at the end of FY2003-04: 1997 Tax Allocation Bonds – Escrow Fund, 1997 Tax Allocation Bonds Debt Service Fund, 2000 Tax Allocation Bonds Debt Service Fund, Great Mall of the Bay Area Sales Tax Revenue Bonds Debt Service Fund. These funds were established to account for various debt services. Due to defeasance of these bonds, it is no longer necessary to maintain the related debt service funds.

A detailed staff report providing additional information on the budget adjustments is included in the Council/Agency packet along with a budget change form.

Recommendation:

1. Approve the Fiscal Year 2003-04 year-end budget appropriations and transfers as itemized in the budget change form included in the Agency/Council agenda packet.
2. Approve closure of the 1997 Tax Allocation Bonds – Escrow Fund, 1997 Tax Allocation Bonds Debt Service Fund, 2000 Tax Allocation Bonds Debt Service Fund, Great Mall of the Bay Area Sales Tax Revenue Bonds Debt Service Fund.

***RA12. Accept the 2004-2005 Final Budget and the 2004-2009 Final Capital Improvement Program (Staff Contact: Emma Karlen, 586-3145)**

Background: Transmitted herewith are the 2004-2005 Final Budget and the 2004-2009 Final Capital Improvement Program incorporating the changes approved by the City Council/Agency during the May 11, 2004, budget hearing. The budget appropriations total \$125,538,449, which

includes \$14,323,712 for Capital Projects in the first year of the five-year plan was adopted by the City Council on June 1, 2004.

Recommendation: Note receipt and file.

- *RA13. Authorize the City Manager to Terminate the Professional Services Agreement with Munifinancial and Authorize Substitute Agreements with Willdan for Services Related to Midtown Parking Strategies and David Taussig & Associates for Services Related to Assessment and Maintenance Strategies (Staff Contact: Blair King, 586-3060)**

Background: On April 6, 2004, Council granted staff authorization to enter into a professional services agreement with MuniFinancial in an amount not to exceed \$70,000 for professional services related to the development of maintenance cost strategies and cost spreads for two Midtown related issues. Specifically, the issues are approaches associated with a parking strategy for Midtown, and methods and approaches to address long term maintenance obligations related to Midtown and other landscaping and infrastructure improvements.

Staff is now recommending that in accordance with the terms of the agreement between the City and MuniFinancial, that the agreement be terminated and that the goals originally envisioned for the agreement be pursued via two new professional agreements, one with Willdan for development of Midtown Parking Strategy, and the other with David Taussig & Associates for assessment district issues. The costs will not exceed the budget originally authorized for this project including the relative small fee (approximately \$4,300) already paid to MuniFinancial.

The need for this work is time sensitive, and it is felt that the approach now recommended will produce the results in a more timely fashion. MuniFinancial was originally selected in accordance with the City's consultant selection process. David Taussig & Associates was contacted during the original procurement process. Willdan is a sister firm of MuniFinancial and will step into the same role for a reduced portion of the engagement.

Recommendation: Authorize the City Manager to terminate the Professional Services Agreement with MuniFinancial and Authorize Substitute Agreements with Willdan for services related to Midtown Parking Strategies and David Taussig & Associates for services related to Assessment and Maintenance Strategies

RA14. Agency Adjournment

XV. REPORTS OF OFFICERS AND BOARDS

City Council

- 4. Consideration of Potential “Sunshine” Type Ordinance Related to Identifying Employee Compensation Information as a Public Record: Mayor Esteves (Staff Contact: Steve Mattas, 586-3040)**

Background: At the August 17, 2004, City Council meeting, while considering a request from the *Milpitas Post* for employee salary information, several City Councilmembers expressed interest in considering further a “sunshine” type ordinance that specifically provided that compensation information was a public record. Mayor Esteves has requested this item be placed on the agenda at this meeting for further direction from the City Council. Staff believes that several of the various “sunshine ordinances” adopted by cities throughout the state (such as San Francisco, San Diego, Oakland, and Los Angeles) contain provisions regarding the public availability of employee salary information. The City Council may desire to have staff obtain these documents for review by the City Council. Staff would therefore recommend that, if the City Council desires to consider the adoption of a “sunshine” type ordinance related to the public availability of City employee compensation information, staff be directed to compile the various sunshine ordinance provisions regarding the public availability of employee compensation

information, review the City's MOUs with the City's employee organizations and the City's personnel rules, and provide a report and draft ordinance to the City Council for further consideration.

Recommendation: Consider the issue and provide direction to staff as determined appropriate by the City Council.

5. Consider Library Service Reductions: Santa Clara County Library Joint Powers Authority: Vice Mayor Dixon (Staff Contact: Cynthia Maxwell, 586-3282)

Background: On August 23, 2004, the Santa Clara County Library Joint Powers Authority (JPA) adopted a revised budget for FY 2004-05. The revision was in response to a \$1.1 million shortfall created by the State budget crisis. Library services will be significantly impacted due to the revised budget. Effective October 1, 2004, all JPA libraries, including the Milpitas Library, will be closed every Monday.

Recommendation: Consider Vice Mayor Dixon's report and provide direction to staff, if appropriate.

Arts Commission

*** 6. Approve the Art in Your Park Project Roles and Responsibilities For the Milpitas Alliance for the Arts and the City of Milpitas, as Recommended by the Arts Commission (Staff Contact: Kathleen Yurchak, 586-3209)**

Background: At the June 23, 2003, Arts Commission meeting, members of the Milpitas Alliance for the Arts, reviewed new roles and responsibilities for Art in Your Park Projects, which would incorporate the Milpitas Arts Commission and City Council into an advisory and voting body for Art in Your Park project procedures and clearly outline project responsibilities assigned to the Milpitas Alliance for the Arts and the City of Milpitas. At the July 28, 2003, Arts Commission meeting, the Arts Commission reviewed and recommended approval of the final draft of the Art in Your Park Roles and Responsibilities.

Recommendation: Approve the Arts Commissions' recommendation for adoption of the Art in Your Park Project Roles and Responsibilities.

Sisters Cities Commission

*** 7. Approve Budget Request from the Sister Cities Commission for Services Supporting 2004 Dagupan City Municipal Exchange Visit (Staff Contact: Leslie Stobbe, 586-3352)**

Background: On April 15, 2003, the City of Milpitas established a Memorandum of Understanding (MOU) for a two-year sister city relationship with the City of Dagupan, Philippines. The MOU includes exchanges to encourage and foster goodwill and friendship visits of city officials and/or members of City of Milpitas and Dagupan commissions, Dagupan City Association, and residents of Milpitas and Dagupan. Mayor Benjamin Lim will lead a group of 15 delegates for Dagupan City's first official sister city visit to Milpitas on September 14-15, 2004. In addition, Dagupan Sister Cities Commission members plan to visit Milpitas and attend the Milpitas Commission meeting on September 23, 2004.

Included in the Council's agenda packet is an itinerary for two days in Milpitas that both Sister Cities Commissions facilitated with Milpitas community representatives. For the September 14-15 visit, includes two dinners, one proposed to be hosted on the main floor of City Hall and one hosted by Milpitas residents Rodolfo and Aida Halili, and tours of City facilities and points of interest. This budget request includes food services for 40 people, transportation for local tours, an official city gift, and hosting expenses for two days. The Northern California Dagupan City Association will secure airport transportation and accommodations.

The Commission reviewed proposed services on August 26, 2004, and staff estimated pricing as follows:

Catering for 40 People (\$27.55 per person; includes linens & china)	\$1,102.00
Van Rental (3 vans, 2 days)	430.00
Reimbursed Expenses (van refueling; lunches & refreshments for 15 visitors, two days)	585.00
Official City Gift	300.00
Reimbursed Expenses for September 23 visit	183.00
TOTAL	\$2,600.00

Council budget approval for fiscal year 2004-05 provides up to \$2,600 per sister city per year. This budget request would support sister city activities with Dagupan through the duration of this relationship, April 15, 2005.

Recommendation:

1. Approve expenses for the Dagupan City September 14-15, and September 23, 2004, municipal exchange from the Council's Community Promotions budget.
2. Authorize the City Manager to execute invoices not-to-exceed \$2,600.

XVI. UNFINISHED BUSINESS

8. Approve Gateway Sign Pilot Project Conceptual Design and Location (Staff Contact: Tambri Heyden, 586-3280 and Mike McNeely, 586-3301)

Background: At the August 17, 2004, Council meeting, staff presented an action plan to address the objectives of the remaining gateway and entry recommendations of the Streetscape Master Plan. That action plan included bringing forward to the next Council meeting a conceptual design that refines the Master Plan concept for construction as a pilot project at one of the minor gateway locations identified in the Master Plan. Minor gateways are collector streets that cross over the city limits of Milpitas from adjacent communities and that should continue the same theme established by other city gateways. Excluding Midtown gateways, these areas include: 1) Piedmont Rd., at Landess Avenue, 2) N. Milpitas Boulevard at the city's northern limits, 3) South Park Victoria Blvd. at Landess Avenue, 4) Capitol Avenue at the city's southern limits and 5) S. Main Street at Montague Expressway.

Staff has reviewed these locations in the field to determine the best options in terms of available space and lighting and landscaping opportunities for this pilot project. The gateway design and preferred location will be presented at the Council meeting. Staff will return to the Council with a recommended funding source as part of a mid-year Capital Improvement Program (CIP) request.

Recommendation: Approve the presented gateway sign pilot project design and location.

*** 9. Odor Control Comprehensive Action Plan Update (Staff Contact: Darryl Wong, 586-3345)**

Background: Staff has continued to develop an odor contingency plan to incorporate into the odor action plan. Recent key activities include odor contingency planning sessions with Browning-Ferris Industries (BFI) and with the San Jose/Santa Clara Water Pollution Control Plant (WPCP). As part of the proposed contingency plan, WPCP and BFI have already taken measures to assist in odor control efforts. Specifically, the WPCP has recently utilized a neutralizing spray, limited operational hours (to avoid operating when wind direction is towards Milpitas), and instituted supervisory oversight of the operation. BFI has introduced the use of meteorological information to make decisions on compost operations, accelerated processing of potential high odor organic materials, and increased supervisory oversight. The contingency plan

will be incorporated into the odor action plan and will describe steps to be taken should a major odor event occur.

The Bay Area Air Quality Management District (BAAQMD) has reported the following number of complaints logged:

- October 2003: 96
- November 2003: 50
- December 2003: 17
- January 2004: 31
- February 2004: 11
- March 2004: 23
- April 2004: 22
- May 2004: 13
- June 2004: 15
- July 2004: 19
- August 2004: 29

Recommendation: Note receipt and file progress report.

XVII. NEW BUSINESS

*** 10. Appointment of Ethics Evaluators to Serve on the Ethics Evaluation Panel and Authorization of the City Manager to Negotiate Consulting Agreements with Ethics Evaluators (Staff Contact: Tambri Heyden, 586-3280)**

Background: The City Council adopted Ordinance No. 265 on August 17, 2004, which establishes the Ethics Evaluation Panel. The Panel is charged with resolving complaints regarding alleged violations of the City's Code of Ethics. The Ordinance provides that the evaluators shall be appointed by the City Council, upon the recommendation initially of the City's Ethics Consultant, Dr. Thomas Shanks, and that the consultants shall serve pursuant to a consultant contract. Dr. Shanks will recommend one of the Panelists to serve as the Lead Ethics Evaluator. Subsequently when there are vacancies on the Panel, the Panel will nominate candidates to fill the vacancies. Typically, the term of office of the Evaluators is four years, but the initial appointments are staggered. The initial appointments are as follows: the Lead Ethics Evaluator will serve a standard four-year term, the second evaluator will serve a three-year term, the third evaluator will serve a two-year term; and the fourth evaluator will serve a one-year term.

The Ordinance becomes effective on September 18, 2004. In order to ensure that the Ethics Evaluation Panel is in place and ready to conduct business upon the effective date of the Ordinance, it is necessary that the City Council appoint at least three members of the Panel at the September 7, 2004 meeting. Dr. Shanks is in the final stages of discussions with four persons that he would recommend to serve as Ethics Evaluators. However, their names are not yet available because the candidates have not yet made firm commitments. Upon receiving Dr. Shanks' recommendations, staff through the Steering Committee will prepare a supplemental report with the names of the candidates and their qualifications and distribute it to the City Council no later than Friday, September 3.

In addition, consulting contracts must be finalized with the Ethics Evaluators prior to September 18 to ensure that the Panel is in place on the effective date of the Ordinance. Staff anticipates that the Ethics Evaluators will be compensated at a flat rate for each complaint received and hearing attended. Hence, it is difficult to predict the actual amount of compensation without knowing the workload of the Panel. Therefore, staff is requesting that the City Council authorize the City Manager to negotiate Consulting Agreements with the appointed Ethics Evaluators in a total not-to-exceed-amount for the four contracts of \$50,000 per year. A budget appropriation of \$50,000 from the General Fund is proposed. This not-to-exceed-amount conservatively assumes 25

hearings per year; the value of the contracts would be significantly less if there are fewer hearings.

Upon the Evaluators' appointments, Dr. Shanks and the City Attorney's Office would immediately provide orientation and training on hearing procedures so that the Panel is ready to conduct business on the effective date of the Ordinance.

Recommendation: Consider Dr. Shanks' recommendations of persons to be appointed to serve as Ethics Evaluators and appoint a Lead Ethics Evaluator and at least two Ethics Evaluators. In addition, staff recommends that the City Council authorize the City Manager to negotiate and enter into consultant agreements with the persons appointed to serve on the Ethics Evaluation Panel in an aggregate not-to-exceed-amount of \$50,000 per year and approve budget appropriation from the General Fund.

*** 11. Approve Filling Vacant Positions and Authorize Budget Request: Maintenance Worker I/II, Maintenance Worker III, Public Services Assistant (Staff Contact: Cherie Rosenquist, 586-3082)**

Background: Three vacancies have or will occur in key departmental positions due to retirement or promotion.

A Maintenance Worker I/II will retire in September and the Public Works Department is requesting that this position be filled to provide ongoing facilities services.

The Public Works Department requests to fill a frozen Maintenance Worker III to provide sufficient support for the new Dog Park, two Parc Metro parks, and the newly renovated Selwyn Park.

As a result of an internal promotion a Public Services Assistant vacancy occurred that provides direct administrative support to the public and the Recreation Division requests that this position be filled.

Sufficient funds are included in the fiscal year 2004-05 budget to cover salaries and benefits for the Public Services Assistant and the Maintenance Worker I/II. Staff requests a budget increase for the Maintenance Worker III. Staff would also request that if any of the vacancies were filled through an internal promotion, that the resulting vacancy be filled as well.

Recommendation: Approve filling a Public Services Assistant, a Maintenance Worker I/II, and an unfunded Maintenance Worker III and approve a budget appropriation of \$69,000.

*** 12. Approve Cancellation of the July 19, 2005, City Council Meeting (Staff Contact: Gail Blalock, 586-3001)**

Background: The City Council typically cancels one City Council meeting in July each year to allow for a summer vacation period. In the past several years, the second meeting in July has been canceled due to the fact that Councilmembers generally do not schedule their vacations until after the City's July 4th activities. The second Tuesday in July 2005 is July 19. This item is being brought before the Council at this time because work on the 2005 City Calendar is currently underway. In order to show cancellation of the July Council meeting on the 2005 City Calendar, the action needs to be taken now.

Recommendation: Approve cancellation of the July 19, 2005, City Council meeting.

*** 13. Response to Grand Jury Report – Inquiry into the Board Structure and Financial Management of the Valley Transportation Authority (Staff Contact: Thomas Wilson, 586-3050)**

Background: A request for a response from the City was received from the Santa Clara County Grand Jury for its Inquiry into the Board Structure and Financial Management of the Valley Transportation Authority. A response is due to the Grand Jury no later than September 20, 2004. Included in the Council's packet is a copy of the recommended response along with a copy of the Grand Jury's Final Report.

Recommendation: Approve the response for forwarding to the Santa Clara County Grand Jury.

XVIII. ORDINANCES

- * 14. **Adopt Ordinance No. 263 Adding a New Chapter 19 to Title V of the Milpitas Municipal Code Prohibiting the Use of Vehicles for Human Habitation (Staff Contact: Dennis Graham, 586-2502)**

Background: Ordinance No. 263 was introduced at the August 17, 2004, City Council meeting and is now ready for second reading and adoption. This ordinance is in response to complaints from residents about people living and sleeping in vehicles parked on residential streets. The ordinance will prohibit and regulate the use of vehicles for human habitation and will enable the Police Department to address this issue more efficiently.

Recommendation:

1. Waive full reading of the ordinance.
2. Adopt Ordinance No. 263 adding Chapter 19 to Title V of the Milpitas Municipal Code prohibiting the use of vehicles for human habitation.

XIX. RESOLUTIONS

- * 15. **Adopt Resolution Approving Milpitas Fire Stations as Safe Havens under the California Safely Surrender Baby Law (Staff Contact: Bill Weisgerber, 586-2811)**

Background: Staff delivered a presentation and report to Council, on The Safely Surrendered Baby Law (also known as the "Safe Haven Law"), at the August 17, 2004, City Council meeting. The law, effective since January 1, 2001, authorizes the Santa Clara County Board of Supervisors to designate locations where newborns (less than 72 hours) may be confidentially surrendered, by a parent or guardian having lawful custody of the child, without fear of criminal prosecution. "Safe Haven" programs are part of a statewide effort to end child abandonment.

Since January 2001, Santa Clara County protocol allowed for Safe Haven surrender at only Hospital Emergency Departments. On August 3, 2004, the Santa Clara County Board of Supervisors passed a resolution authorizing all fire stations in Santa Clara County to be designated as California Safe Havens when adopted by local Council resolution.

With adoption of this resolution, Safe Haven sites will be implemented at Milpitas Fire Stations simultaneously with all 10 Santa Clara County Fire Service Agencies. A coordinated countywide effort of implementation will include Public Outreach and Education as well as Fire Service Training. The result will be a seamless implementation throughout the County, which is anticipated for the month of November.

Recommendation: Adopt resolution approving Milpitas Fire Stations as Santa Clara County Safe Havens under the California Safely Surrendered Baby Law, in coordination with all County Fire Agencies.

- * 16. **Adopt Resolution Amending Exhibit A, List of Designated Disclosure Positions, of the City of Milpitas Conflict of Interest Code (Staff Contact: Gail Blalock, 586-3001)**

Background: The State Political Reform Act requires that the City Council review the City's Conflict of Interest Code biennially (in even-numbered years) to determine if it is up to date or if

changes are necessary. The City's Conflict of Interest Code was last reviewed and amended on October 1, 2002. Staff review indicates that there have been changes to job titles during the last two years, which require that the Code be updated. A proposed resolution amending Appendix A of the City's Conflict of Interest Code and incorporating these changes is included in the Council's agenda packet.

Recommendation: Adopt resolution updating the City's Conflict of Interest Code.

XX. BIDS AND CONTRACTS

*** 17. Approve Budget Appropriation and Purchase: Conservation Grant Funding; School Recycling Assemblies (Staff Contact: Leslie Stobbe, 586-3352)**

Background: On May 15, 2001, and October 7, 2003, Council passed and adopted Resolution No. 7094 and 7351 that authorized annual submittals for grant funding requests to the Department of Conservation, Division of Recycling Funds (DOC). Staff is pleased to report that the City has received a FY04-05 award of \$18,052 that may be used for promotion of residential and school recycling education programs. A Budget Appropriation is proposed to accept the award. To continue support of the Recycling & Composting Project, staff requests approval for a Purchase Order of \$11,000 to the firm of Earthcapades for student and faculty recycling education assemblies in the Milpitas Unified School District Elementary and Middle Schools. Earthcapades is recommended due to its expertise and experience in the field. The remaining portion of the \$18,052 grant will be utilized for additional recycling outreach activities to be defined in the future. Included in the Council's agenda packet is a staff memorandum outlining the Recycling & Composting Program for schools and providing more detail on Earthcapades.

Recommendation:

1. Approve the Budget Change Form for the \$18,052 grant award and;
2. Authorize the City Manager to execute a purchase order with Earthcapades for educational assemblies to promote residential recycling services in schools at an amount not to exceed \$11,000, subject to approval as to form by the Purchasing Agent.

*** 18. Authorize the City Engineer to Execute Authorization Letter: SBC Communications, Inc., Abel/Calaveras Right Turn Lane, Project No. 4186 (Staff Contact: Greg Armendariz, 586-3401)**

Background: This project is included in the current five-year Capitol Improvement Program (CIP). The completed project provides a right turn lane from northbound Abel Street to eastbound Calaveras Blvd.

Relocation and adjustment of SBC facilities within the project area are necessary. Staff has negotiated a scope and fee with SBC for the relocation of the SBC facilities not to exceed \$10,297.10, which is considered reasonable for the work. There are sufficient funds in the project budget(s) to cover this additional expense.

Recommendation: Authorize the City Manager to execute Authorization Letter with SBC Communications, Inc., in the amount of \$10,297.10, subject to approval as to form by the City Attorney.

*** 19. Approve Consultant Agreement Amendment: Raines, Melton, and Carella, Incorporated, Wet Weather Monitoring Evaluation, Project 6102 (Staff Contact: Darryl Wong, 586-3345)**

Background: Several recent development proposals could result in increased sewage discharges that may affect both the City's required sanitary sewer collection system and regional treatment plant capacities. An evaluation is proposed on the impact of new developments on needed sewage capacities and a determination of associated capacity cost increases. Potential Developer

Impact Fees will be determined as a product of the evaluation. The consulting firm of RMC is recommended for the work since they are working on an update to the sewer master plan, have developed the sanitary system modeling used to establish the capital improvement program, and are already familiar with the use of the model and technical details required for the evaluation. Staff has determined that the cost of \$21,690 to perform this work is reasonable. A budget appropriation form is included in the Council packet.

Recommendation:

1. Authorize the City Manager to execute the agreement amendment with Raines, Melton, and Carella, Inc., subject to by the City Attorney as to form, to increase the contract amount.
2. Approve the budget appropriation for \$21,690.

- * 20. **Authorize the City Engineer to Execute a Contract Change Order: Interim Senior Center Kitchen and Interior Improvements, Project No. 8151, (Staff Contact: Greg Armendariz, 586-3401)**

Background: The City Council awarded this project to Ranis Construction on June 6, 2004, and construction is underway. The completed project will improve the existing kitchen and restrooms, as well as provide an additional game room, and the anticipated completion date is November 30, 2004.

Staff recommends additional work to repair unforeseen dry rot and termite damage in the restroom walls, relocate and repair unknown electrical lines, upgrade flooring material, and minor painting. Staff has negotiated a fee not to exceed \$19,219.10 with the Contractor for this additional work, and the approval of a contract change order is requested. Sufficient funds are available in the project budget for this change order.

Recommendation: Authorize the City Engineer to execute the Contract Change Order for Ranis Construction in the amount of \$19,219.10.

- * 21. **Authorize the City Manager to Execute the Agreement: Olivia Chen Consultants: Berryessa Pump Station Improvements (Project No. 8138) (Staff Contact: Doug DeVries, 586-3313)**

Background: This project is included in the current five-year Capital Improvement Program (CIP). The project will refurbish the Berryessa storm drainage pump station to improve its reliability and efficiency, and to ensure compliance with environmental regulations.

In accordance with the City's consultant selection process, Olivia Chen Consultants was selected to provide professional engineering services required to design the improvements for this project. A scope of work has been negotiated at a not to exceed amount of \$120,000.00 for the requested services. The fee is considered reasonable for the work involved, and there are sufficient funds in the project budget to cover the costs.

Recommendation: Authorize the City Manager to execute the agreement amendment with Olivia Chen Consultants, in the amount of \$120,000.00, subject to approval as to form by the City Attorney.

- * 22. **Award Bid for Purchase of Replacement Police Investigation Vehicles and Parks Van (Staff Contact: Lou Zenzen, 586-3161)**

Background: In the current fiscal year budget, there are three investigation cars that are scheduled for replacement for the Police Department, pursuant to the specified years of service stipulated in the MPOA MOU. The budget also includes a cargo van scheduled for replacement for Parks Maintenance due to excessive repairs. Purchasing worked with Police Department, Park Maintenance and Fleet Maintenance staff to develop specifications on the vehicles and bids

were sent to sixteen Ford dealers on Purchasing's bidders list. Five bids were received and are totaled below for the purchase of the new investigation vehicles and van. One dealer, Downtown Ford, did not bid on the investigation vehicles and two dealers, Hayward Ford and Hoblit Motors, did not bid on the van.

Frontier Ford	\$94,091.04
S & C Ford	\$94,728.09
Hoblit Motors	\$76,811.88
Hayward Ford	\$77,374.31
Downtown Ford	\$20,119.03

Sufficient funding has been allocated in the Equipment Replacement Fund for the purchase of the investigation vehicles and the van.

Recommendation: Award the bid for the vehicles to Frontier Ford as the lowest bidder in the amount of \$94,091.04 which includes taxes and freight and authorize the purchase.

***23. Award Bid for Annual Public Works Garment Purchases (Staff Contact: Lou Zenzen, 586-3161)**

Background: Staff requested quotations from 13 t-shirt vendors on Purchasing's bidders list for the annual purchase of garments for the Public Works Department, five responded. Two vendors, Logos, Etc. and Tome', submitted incomplete bids where they did not bid on some of the largest size shirts and hats. The vendors are required to embroider or silkscreen 2,093 garments per the following breakdown: 1,273 shirts, 428 sweatshirts and 392 hats. These garments are required by the Milpitas Employees Association memorandum of understanding and are required to be worn on a daily basis by maintenance workers. The following is the recap of bids received including tax and freight:

<u>Bidder</u>	<u>Amount</u>
Prolific Screen Printing	\$20,722.70
Century Graphics	\$24,263.73
Tome'	\$25,311.24
Logos, Etc.	\$31,179.79

Funds are available in the Public Works Department operating budget for this purchase.

Recommendation: Award the bid for garment purchases to the lowest bidder, Prolific Screen Printing in the amount of \$20,722.70.

*** 24. Award Bid for Purchase of Replacement Police Patrol Vehicles (Staff Contact: Lou Zenzen, 586-3161)**

Background: In the current fiscal year budget, there are six patrol cars, one van and one SUV truck that are scheduled for replacement for the Police Department, pursuant to the specified mileage service stipulated in the MPOA MOU. Purchasing, worked with Police Department and Fleet Maintenance staff to develop specifications on these vehicles and bids were sent to seventeen Ford dealers on Purchasing's bidders list. Four bids were received and are totaled below for the purchase of the new patrol cars, van and truck. One dealer, Frontier Ford, did not bid on the van and truck.

S & C Ford	\$220,757.99
Hayward Ford	\$225,304.35
Hoblit Motors	\$227,997.18
Frontier Ford	\$163,456.54

Sufficient funding has been allocated in the Equipment Replacement Fund for the purchase of the patrol vehicles.

Recommendation: Award the bid for the vehicles to S & C Ford as the lowest bidder in the amount of \$220,757.99 which includes taxes and freight and authorize the purchase.

- * **25. Authorize the City Engineer to Execute a Contract Change Order: 2004 Street Resurfacing Project, Project Nos. 4182 and 4223, (Staff Contact: Doug DeVries, 586-3313)**

Background: The City Council awarded this project to C. F. Archibald Paving, Inc. on July 7, 2004, and construction is underway. The completed project will provide new pavement for various City streets, and the anticipated completion date is October 25, 2004.

Staff recommends that additional work to slurry seal Piedmont Road between Aguilar Court and Calaveras Boulevard be included in the project. Staff is negotiating a fee not to exceed \$25,000 with the Contractor for this additional work, and the approval of a contract change order is requested. Sufficient funds are available in the project budget for this change order.

Recommendation: Authorize the City Engineer to execute the Contract Change Order for C. F. Archibald Paving, Inc. in an amount not to exceed \$25,000.

XXI. CLAIMS AND DEMANDS

- * **26. Authorize the Purchase of a Replacement Mower (Staff Contact: Lou Zenzen, 586-3161)**

Background: The Parks Division is requesting the purchase of a large Toro turf mower with a 16-foot cutting width replacing a 1997 model of the same size. The mower has been problematic this past year and is authorized for replacement in this year's capital outlay budget. The Toro Company only allows sales of its larger mowing equipment through their exclusive distributors. Turf Star, Inc. is the California and Nevada distributor and has quoted a total cost of \$76,030.72, which is within budget. Staff is requesting that the mower be purchased as a sole source item as sanctioned in section I-2-5.03-4 of the Milpitas Municipal Code. There are sufficient funds available in the Equipment Replacement Fund for the purchase of the large turf mower.

Recommendation: Award the purchase of the large Toro turf mower from Turf Star, Inc. as a sole source purchase in the amount of \$76,030.72 including tax and freight.

- * **27. Approve Payment Requests: Miscellaneous Vendors/Contractors (Staff Contact: Lou Zenzen, 586-3161)**

Background: In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$5,607.09 to Spinitar Presentation Products for the purchase of a poster printer, software, maintenance and support for Recreation Services and Utility Engineering programs. (Funds are available from the Recreation Services and the Engineering Division operating budgets for this purchase.)
2. \$14,945.96 to Alcad Standby Batteries for the urgent purchase of batteries, seismic racks and charging system to replace a failing battery system at the Oakcreek pump station. The battery system starts the diesel engines that runs the pumps and provides power to the control panels in case of a power failure. (Funds are available from the Oakcreek Pump Station Engine Replacement (Project No. 8140) project budget for this purchase.)

3. \$9,236.60 to The Stuart Rental Company for rental of tents, booths, tables, chairs and other miscellaneous items for the Global Village event for Recreation Services. (Funds are available from the Recreation Services operating budget for this rental payment.)
4. \$8,500.00 to Raines, Melton and Carella, Inc. to prepare a City wide sewer system map diagramming lines and manholes, flow volumes, direction and other data to estimate future buildout dates for the Utility Engineering section. (Funds are available from the Miscellaneous Minor Sewer Projects (Project No. 6057) project budget for this service.)
5. \$5,412.50 to The Active Network for annual software maintenance for recreation activity management software. (Funds are available from the Information Services Department operating budget for this maintenance payment.)
6. \$11,422.00 to Golden Gate Mechanical for the replacement of a failing air-handling unit at the Community Center. Golden Gate Mechanical's was the lowest quote of four submitted. (Funds are available from the Community Center Renovation (Project No. 8102) project budget for this service.)

Recommendation: Approve the purchase requests.

XXII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, SEPTEMBER 21, 2004, AT 7:00 P.M.**

CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
August 17, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

1. CONFERENCE WITH LABOR NEGOTIATORS

(Pursuant to Government Code Section 54957.6)

Agency Representatives: Eddie Kreisberg and Cherie Rosenquist

Employee Organization: LIUNA

2. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Pursuant to Government Code Section 54956.9)

Milpitas v. Turner Construction et al.

Santa Clara County Superior Court Case No. 103 CV 008400

3. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

(Pursuant to Government Code Section 54956.8)

Property: 94, 110 and 130 Winsor St. (APNs 028-24-014 and 028-24-015) and 112 North Main St. (APN 028-024-026) and (APN 028-024-020)

Negotiating Parties: Milpitas Redevelopment Agency and Dorothy A. & Ruth A. Winsor

Agency Negotiators: Thomas J. Wilson and Blair King

Under negotiation: Terms and Conditions for disposition or lease.

4. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

(Pursuant to Government Code Section 54956.8)

Property: 86 North Main Street, APN 028-024-025

Negotiating Parties: Milpitas Redevelopment Agency and Juan J. Rodriguez and Rose E.

Rodriguez Trustees of the The Juan and Rose Rodriguez Family Trust, dated December 18, 2001

Agency Negotiators: Thomas J. Wilson and Blair King

Under negotiation: Terms and Conditions for disposition or lease.

5. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: APN #022-08-042 (vacant property south of DeVries/Smith House)

Negotiating Parties: City of Milpitas/Redevelopment Agency and County of Santa Clara

Agency Negotiator: Thomas J. Wilson

Under Negotiation: Terms and Conditions for Disposition or Lease

6. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: Vacant Property N. Main Street (APN No. 2208003)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

7. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: 163 North Main Street, APN #022-08-041

Negotiating Parties: Mid-Peninsula Housing Coalition, a California Non-Profit Public Benefit Corporation, City of Milpitas, and Milpitas Redevelopment Agency
Agency Negotiators: Thomas J. Wilson and Blair King
Under Negotiation: Terms and conditions for disposition or lease

8. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: 120-150 Winsor St. and 116-130 N. Main St.

Negotiating Parties: Milpitas Redevelopment Agency and Dorothy A. & Ruth A. Winsor

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

9. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: A 0.14 acre portion of APN #28-24-017 (198 Winsor St.), a rectangular flag portion of a lot near Winsor St. and Weller

Negotiating Parties: B. Valani

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES: August 3, 2004

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

Recognition of visiting delegation from Sister City Tsukuba City Teachers and Students

- Kazuhiro Idemura, read letter from Mayor Fujisawa to Mayor Esteves
- Mieko Tamura, introduce seven Tsukuba students
 - Hiroshi Aizawa
 - Hirotooshi Kitajima
 - Yuri Kuranami
 - Masumi Terada
 - Shiori Terada
 - Naoya Uemura
- Sumiyo Sato, third-grade student, to address Council

Proclamation:

- Dem Nitafan, retiring Planning Commissioner, for contributions to the community

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. APPROVAL OF AGENDA

XI. CONSENT CALENDAR (Items with Asterisks)

XII. PUBLIC HEARINGS

1. Continue the Amended Density Bonus, "S" Zone Approval Amendment No. SA2004-7, Use Permit Amendment No. UA2004-2 and Land Exchange Agreement for Apton Plaza – 230 North Main Street (Staff Contact: Staci Pereira, 586-3278)
2. Accept Report Regarding Public Health Goals for Milpitas' Drinking Water Supply (Staff Contact: Darryl Wong, 586-3345)

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: AUGUST 3, 2004

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

- *RA5. Adopt Resolutions Approving the Annual Investment Policy (Staff Contact: Emma Karlen, 586-3145)**

RA6. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

- * 3. Approve the Mayor's Appointment to the Youth Advisory Commission: Mayor Esteves**

Arts Commission

4. Art in Public Places Presentation by the Arts Commission – Presented by Commissioners Foulk, Rabe and Hays (Staff Contact: Kathleen Yurchak, 586-3209)
- * 5. Approve Funding for Ten Cultural Arts Support Program Grants for FY 2004-2005, as Recommended by the Arts Commission (Staff Contact: Renee Lorentzen, 586-3214)

Parks, Recreation, and Cultural Resources Commission

- * 6. Approve Twelve Individual Family Child Care Assistance Grant Requests (Staff Contact: Toby Librande, 586-3203)
- * 7. Approve One (1) Organizational Youth Sports Assistance Fund Grant Request (Staff Contact: Kerrilyn Ely, 586-3231)

XV. UNFINISHED BUSINESS

8. **Approve Pre-Kindergarten Education Kit Pilot Program, (Staff Contact: Bonnie Greiner, 586-3227 and Toby Librande, 586-3203)**
9. **Consideration of Adoption of the City Council Handbook (Staff Contact: Steve Mattas, 586-3040)**
10. **Receive Report Regarding Gateway Signs (Staff Contact: Tambri Heyden, 586-3280 and Mike McNeely, 586-3301)**

XVI. NEW BUSINESS

- * 11. **Response to Grand Jury Reports: (1) Inquiry into Financial and Performance Audits for the County and Cities in the County and (2) Inquiry into Police Evidence Rooms in Santa Clara County (Staff Contact: Thomas Wilson, 586-3050)**
12. **Consideration of Public Records Request for Employee Salary Information (Staff Contact: Steve Mattas, 586-3040)**
13. **Presentation of Countywide Safely Surrendered Baby Program (“Safe Haven”) for the Confidential Surrender of Newborn Infants (Staff Contact: Bill Weisgerber, 586-2811)**
- * 14. **Amend Facility Use Policy for the Community Room at the Police Administration Building Limiting the Number and Duration of Reservations (Staff Contact: David Rossetto, 586-2405)**
- * 15. **Approve Budget Appropriation: Hall Park Walkway (Project No. 5058) (Staff Contact: Greg Armendariz, 586-3401)**

XVII. ORDINANCES

16. **Introduction of Ordinance No. 263 adding a New Chapter 19 to Title V of the Milpitas Municipal Code Prohibiting the Use of Vehicles for Human Habitation (Staff Contact: Dennis Graham, 586-2502)**
- * 17. **Adopt Ordinance No. 265 adding Chapter I-40 to the Milpitas Municipal Code and Establishing the Ethics Evaluation Panel (Staff Contact: Tambri Heyden, 586-3280)**

XVIII. RESOLUTIONS

- * 18. **Adopt Resolution of Intention to Vacate a Portion of North Main Street/Railroad Avenue, Weller Lane, and Winsor Street for Improved Roadway Alignment Purposes (Staff Contact: Mehdi Khaila, 586-3328)**
- * 19. **Adopt Resolution Granting Final Acceptance: Parallel Force Main Project (Project No. 6078) (Staff Contact: Greg Armendariz, 586- 3401)**

XIX. BIDS AND CONTRACTS

- * 20. **Approve Agreement Amendment: Camp Dresser & McKee for Professional Engineering Services Supporting the Solid Waste Program (Staff Contact: Darryl Wong, 586-3345)**
- * 21. **Approve Revised Core Natural Gas Sales and Aggregation Agreement with ABAG Power (Staff Contact: Emma Karlen, 586-3145)**

- * 22. **Approve Encroachment Permit Agreement with TCG San Francisco, a New York General Partnership (Project No. 2381) (Staff Contact: Mehdi Khaila, 586-3328)**
- * 23. **Approve Right of Entry Permit to Department of Water Resources (DWR) of the State of California: Water Line Repair within Piedmont Road (Project No. 3174) (Staff Contact: Mehdi Khaila, 586-3328)**
- * 24. **Approve Agreement Extension for Sidewalk, Curb, and Gutter Repairs: Robert A. Bothman, Inc. (Project No. 4067) (Staff Contact: Lou Zenzen, 586-3161)**
- * 25. **Authorize the City Manager to Execute the Agreement with Orsee Design Associates: Median Landscape on McCarthy Blvd., Associated with the 237/I-880 Interchange Project (Project No. 4170) (Staff Contact: Mike McNeely, 586-3301)**
- * 26. **Approve an Agreement with Peelle Technologies for Programming Services and Software Licensing to Expand the City of Milpitas' Document Imaging System to Include Public Internet Access to Non-Confidential Documents (Project No. 8131 – Information Management) (Staff Contact: Terry Medina, 586-2703)**
- * 27. **Award Bid for Annual Landscape Maintenance Service (Staff Contact: Lou Zenzen, 586-3161)**
- * 28. **Award Bid for Sycamore Tree Pruning (Staff Contact: Lou Zenzen, 586-3161)**
- * 29. **Award Bid for Replacement Traffic Signal Cabinets (Project No. 4220) (Staff Contact: Lou Zenzen, 586-3161)**
- * 30. **Authorize the City Engineer to Execute a Contract Change Order: 2004 Street Resurfacing Project (Project Nos. 4182 & 4223) (Staff Contact: Doug DeVries, 586-3313)**

XX. CLAIMS AND DEMANDS

- * 31. **Approve Payment Request by Calprop Corporation: Parc Metropolitan Development East Park, East Curtis Avenue (Project No. 3061) & (Project No. 7076) (Staff Contact: Mehdi Khaila, 586-3329)**
- * 32. **Approve Payment of Fireworks for the 4th of July Event (2004) (Staff Contact: Bonnie Greiner, 586-3227)**
- * 33. **Approve Payment of the Cal-ID Invoice to the City of San Jose in the Amount of \$56,386 (Staff Contact: David Rossetto, 586-2405)**
- * 34. **Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Lou Zenzen, 586-3161)**

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, SEPTEMBER 7, 2004, AT 7:00 P.M.**

CITY OF MILPITAS
Agenda Reports
Milpitas City Council Meeting
August 17, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

XII. PUBLIC HEARINGS

- 1. Continue the Amended Density Bonus, “S” Zone Approval Amendment No. SA2004-7, Use Permit Amendment No. UA2004-2 and Land Exchange Agreement for Apton Plaza – 230 North Main Street (Staff Contact: Staci Pereira, 586-3278)**

Background: This item was continued at the August 3, 2004, City Council meeting because staff and the applicant were unable to come to an agreement on the Land Exchange Agreement necessitating changes. Another continuance is requested by the applicant due to vacations that did not allow time for the applicant to complete his review of this and other documents associated with the project. The Land Exchange Agreement is part of the necessary Council actions because it is integral to the entitlements of this project and related to the Conditions of Approval. This continuance should allow sufficient time for the applicant to complete his review of the changes and for agreement to be reached on these documents in time for the Council’s meeting on September 7, 2004.

Recommendation:

1. Keep the public hearing open.
 2. Continue the amended Density Bonus, “S” Zone Approval Amendment No. SA2004-7, Use Permit Amendment No. UA2004-2, Land Exchange Agreement to September 7, 2004.
-
- 2. Accept Report Regarding Public Health Goals for Milpitas’ Drinking Water Supply (Staff Contact: Darryl Wong, 586-3345)**

Background: State law mandates that a Public Health Goal (PHG) Report be prepared every three years and that a public hearing be held for the purpose of accepting and responding to any public comments on the report. The report has been prepared by staff to fulfill the requirement. The City's water supply meets all Safe Drinking Water Standards and complies with all requirements of the State Health Department and the Environmental Protection Agency (EPA). The report compares the City's drinking water quality to ambitious goals adopted by State authorities. The goals differ from standards in that they are not enforceable and no action to meet them is mandated.

The report included PHGs for lead and coliform during the 2001, 2002 and 2003 calendar years:

- **Lead.** Lead in some household plumbing was found to be slightly above the public health goal. Lead is not found in the city water supply but is found in some household taps after overnight contact with home plumbing and fixtures that contain lead solder. The wholesale suppliers have completed lead corrosion control optimization evaluation and upgrades. The Health Department has determined that optimum corrosion control has been implemented and no further action is necessary.
- **Coliform.** One out of more than 3900 tests performed was positive, and subsequent re-sampling was negative. The presence of coliform is used to indicate possible microbial contamination in water. It is believed that the original coliform positive resulted from a sampling error and the State Health Department did not require any further actions.

Recommendation:

1. Close the public hearing.

2. Accept the Public Health Goals (PGH) Report.

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: AUGUST 3, 2004

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

***RA5. Adopt Resolutions Approving the Annual Investment Policy (Staff Contact: Emma Karlen, 586-3145)**

Background: The investment laws require all local agencies to develop an annual investment policy that must be considered by the legislative body of the local agency at a public meeting. The Annual Investment Policy (the Policy) for the City of Milpitas is submitted for your review and approval. Finance staff continues to monitor changes to the Government Code in regards to investment parameters and allowable investments that may impact the City's investment policy.

The proposed changes to the Annual Investment Policy are reflected on pages 6 and 7. The proposed changes are to acknowledge that there are more than two nationally recognized statistical rating organizations. Therefore, purchase of any commercial paper and medium term corporate note securities should not be limited to those that are rated by Moody's Investors Service and Standard & Poor's only. Instead, these securities could be rated by any two nationally recognized statistical rating organizations, which include Moody's Investors Service, Standard & Poor's and Fitch Ratings. The proposed changes are consistent with the California Government Code.

The Policy is in compliance with all the provisions of the California Government Code, Sections 53600 through 53659, the authority governing investments for municipal governments. A marked-up copy of the Annual Investment Policy is included in the agenda packet for Council's approval.

Recommendation: Staff recommends that the City Council/Milpitas Redevelopment Agency adopt the attached resolutions approving the Annual Investment Policy.

RA6. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

*** 3. Approve the Mayor's Appointment to the Youth Advisory Commission: Mayor Esteves**

Background: Mayor Esteves is recommending the appointment Khullat Munir to a vacancy on the Youth Advisory Commission for a term expiring September 2005.

Copies of all current applications for the Youth Commission are included in the Council's agenda packet.

Recommendation: Approve the Mayor's appointment of Khullat Munir to the Youth Advisory Commission for a term expiring September 2005.

Arts Commission

4. Art in Public Places Presentation by the Arts Commission – Presented by Commissioners Foulk, Rabe and Hays (Staff Contact: Kathleen Yurchak, 586-3209)

Background: Per the Arts Commission's Work Plan, one of the Commission's goals is to "Research and present to the City Council a proposal to consider adding a percentage allocation for the arts from developer fees". The Commission has researched this item and will be presenting their material to the City Council. Included in the Council's agenda packet is an outline of the Commission's "Art in Public Places" report with supporting material.

Recommendation: Receive the Arts Commission's report and adopt a Public Art Policy requiring (1%) of Capital Improvement Projects budgets over \$1 million to be devoted to public art.

*** 5. Approve Funding for Ten Cultural Arts Support Program Grants for FY 2004-2005, as Recommended by the Arts Commission (Staff Contact: Renee Lorentzen, 586-3214)**

Background: The Cultural Arts Support Program (CASP) is a competitive grant program designed to increase and deepen participation to arts and cultural activities for the Milpitas community. CASP also encourages coalitions and collaborations between artists, art organizations and other sectors to infuse the entire community with art activities.

Ten applicants submitted Cultural Arts Support Program (CASP) grant applications by the June 18, 2004, deadline. Following an analysis by staff, the ten applications were confirmed eligible and forwarded to the Arts Commission for review. The Arts Commission reviewed the applications at their July 26, 2004, meeting and unanimously moved to recommend all ten applicants to receive funding in the amount of \$2,000 each, for a total of \$20,000, leaving a balance of \$2,000.00. Each applicant's proposal was judged on the following criteria:

- Impact on the Milpitas Community
- Support and awareness of Cultural Arts in Milpitas
- The ability to deliver the proposed project

Commissioners rated each applicant based on their written grant proposal on a scale of 1-10, 1 being a poor proposal, 10 being an excellent proposal. Included in the Council's packet for review is a copy of the ten applications, scoring sheet and Arts Commission minutes.

Funding for the FY 2004-2005 Cultural Arts Support Program is appropriated in the Recreation Services' FY 2004 - 2005 operating budget in the amount of \$22,000, upon City Council's approval, on June 1, 2004.

Recommendation: Approve the Arts Commission's recommendations for funding for the Cultural Arts Support Program grants for FY 2004-2005 and allot the remaining balance of \$2,000 to the Arts Commission's Public Art budget for future art purchases.

Parks, Recreation, and Cultural Resources Commission

*** 6. Approve Twelve Individual Family Child Care Assistance Grant Requests (Staff Contact: Toby Librande, 586-3203)**

Background: The purpose of the Family Child Care Assistance Fund is to increase program quality in Milpitas family childcare homes. By submitting a grant request to the City, approved Milpitas family child care providers have the opportunity to purchase services and supplies which will create safer and more enriching environments for children.

The City Council appropriated \$6000.00 to the Family Child Care Assistance Fund for FY 2004-2005. All of these funds are currently available for distribution. As of the 2002-2003 fiscal year, the City of Milpitas Family Child Care Assistance Fund Policies and Procedures allowed a yearly maximum of \$500.00 per applicant. In addition, the PRCRC and City Council approved revised Policies and Procedures that took effect July 1, 2004. Applicants are now not required to have 51% of their clients be Milpitas residents. In lieu of this previous requirement, however, the application has been adapted to begin collecting data regarding resident/work status of the provider's clients (see attachment **Family Child Care Assistance Fund Client Resident & Work Status**). First priority funding was also implemented for providers caring for children with special needs or developmental delays.

To date, fourteen family childcare providers have submitted applications for funding assistance for the Fiscal Year 2004-2005. Upon staff's review each applicant meets the established criteria. Twelve applicants were available to attend the August 2, 2004, PRCRC meeting. The other two applicants had previous commitments for August 2 and plan to attend the September 13, 2004, PRCRC meeting. For an overview of all fourteen applications, please refer to the summary table, **Family Child Care Assistance Fund Grant Requests Received** as of 7/14/04. Also included in the Council's agenda packet are the twelve Family Child Care Assistance Fund Grant applications from the providers present at the August PRCRC meeting. Each provider is requesting the maximum annual grant amount of \$500.00.

The Parks, Recreation and Cultural Resources Commission reviewed the twelve grant applications at its August 2, 2004, meeting and determined that two providers, Phyllis Corriea and Fauzia Salim, qualify for first priority funding because they currently care for children with special needs or developmental delays. The PRCRC is recommending approval of grant funding to the providers in the following denominations:

\$350 to Alejandra Araya
\$350 to Sherry Clanton
\$350 to Yan Ding
\$350 to Donna Egusa
\$350 to Kim Lagman
\$350 to Judy Ligon
\$500 to Phyllis Corriea
\$500 to Sik Kwok
\$350 to Samiha Samawi
\$500 to Elba Chagolla
\$500 to Georgette Christopher
\$500 to Fauzia Salim

There is currently a balance of \$6000.00 in the Fund. Should the grants be approved, \$ 1,050 will remain in the Family Child Care Assistance Fund for the remainder of the FY 2004/2005.

Recommendation: Approve grant funding from the Individual Family Child Care Assistance Fund to the family childcare providers listed as approved by the PRCRC.

- * 7. **Approve One (1) Organizational Youth Sports Assistance Fund Grant Request (Staff Contact: Kerrilyn Ely, 586-3231)**

Background: On June 15, 2004, the City Council approved and appropriated \$8,000 for the Youth Sports Assistance Fund for the 2004-2005-budget year. Included in the Council agenda packet for review and consideration is one (1) Organizational Youth Sports Assistance Fund application.

Youth Sports Assistance Fund Application was received from Milpitas National Little League South, requesting \$ 1,000.00 to offset costs of purchasing two (2) scoreboard controllers, (2) sets of bases and dimple balls.

This applicant meets the eligibility for the grant process. Staff has reviewed the items requested and has found that all requested items meet the application guidelines, under the section, "Funding consideration will be given", page 2, and item #3 states; "To one time activities or capital equipment purchases designed to address a need or problem which organization cannot routinely finance."

The Parks, Recreation and Cultural Resources Commission reviewed the application on August 2, 2004, and recommended approval and funding of one (1) organizational request for \$1,000.00.

There is currently a balance of \$ 8,000.00 in the 2004-2005 Youth Sports Assistance Fund.

Recommendation: Approve one (1) organizational grant for the Milpitas National Little League South in the amount of \$1,000.00 as recommended by the Parks, Recreation and Cultural Resources Commission leaving a balance of \$7,000.00 for the remainder of the fiscal year.

XV. UNFINISHED BUSINESS

8. Approve Pre-Kindergarten Education Kit Pilot Program, (Staff Contact: Bonnie Greiner, 586-3227 and Toby Librande, 586-3203)

Background: At the September 2, 2003, meeting of the City Council, the Council discussed Item XIV, 4 (Approve Conceptual "Pre-Kindergarten Education Kit Pilot Program"). The City Council authorized staff, in cooperation with the Milpitas Unified School District (MUSD), to research the options for a Milpitas pilot "Pre-Kindergarten Education Kit Program".

Beginning in the fall of 2003, City Staff and MUSD staff met in joint committee meetings to investigate the feasibility of a Pre-Kindergarten Education Kit Pilot Program. From these meetings, two priorities were identified: City and MUSD partnering, and enhanced public awareness and emphasis on early care and education. Regarding children's readiness to start Kindergarten, the City / MUSD joint committee agreed that overall a significant number of Milpitas' children are starting Kindergarten without all of the skills and abilities necessary for school success. The committee further acknowledged that with collaboration between the City, MUSD and a professional organization, an intervention could be implemented to improve the school and life chances for Milpitas' most at-risk children. The committee then invited and heard presentations from four organizations that provide school readiness programs or interventions. Of the programs represented, the joint committee agreed that the Raising a Reader program, with early literacy and parent involvement components, fit best with goals and objectives of the Pre-Kindergarten Project.

Raising a Reader is a program that promotes parents and guardians reading with their pre-kindergarten aged children. The program helps educate parents and guardians about why exposure to books is important for school success and provides them with the tools and materials they need to make daily reading practical in their homes. The program involves red book bags filled with children's books, which go home with the family. The bags are exchanged weekly, providing parents and children with a steady stream of new books over the course of the school year. In conjunction with the book bag component, the Raising a Reader program also provides parents with an informational video explaining why reading together is important. Parents are also encouraged to utilize the public library on a regular basis and are provided with a blue library book bag for this purpose.

Included in the Council's packet is a memorandum dated August 4, 2004, which provides additional details regarding the pilot project background, Raising a Reader Program components and cost analysis.

Recommendation: Staff recommends approval of the implementation of the Raising a Reader Program and additional budget appropriation to Function 163 in the amount of \$35,057, which includes:

1. Increase the Preschool Budget Function 163 by \$19,457 for the purchase of Raising a Reader program materials and supplies and to
2. Increase the Preschool Budget function 163 by \$15,600 for a part-time 20 hour per week employee to oversee and implement program.

This funding will provide materials and staffing to serve **120** pre-kindergarten students.

9. Consideration of Adoption of the City Council Handbook (Staff Contact: Steve Mattas, 586-3040)

Background: At the June 16, 2004, City Council meeting, the City Council reviewed examples of City Council Handbooks from other communities and directed staff to prepare a draft City Council Handbook. At that meeting, Vice-Mayor Dixon and Councilmember Polanski provided the City Council with a list of items that they recommended be included in the Handbook. The City Council also referred the matter to the City Attorney Subcommittee for oversight in preparing the draft City Council Handbook. Working in conjunction with the City Attorney Subcommittee, the City Attorney has prepared the draft City Council Handbook for City Council consideration. The City Council Handbook is a collection of policies and procedures for the City Council. The topics include: (1) a Vision and Goals Statement; (2) a listing of policies related to actions of councilmembers including items such as roles of the Mayor and Vice-Mayor, seating, absences, committees, compensation, correspondence to and from councilmembers and council conduct; (3) concurrent roles of councilmembers, (4) conflict of interest, (5) open meeting requirements, (6) a description of types of council meetings, (7) procedures for conduct of council meetings; (8) a description of the types of council actions, (9) a description of parliamentary and voting procedures, (9) a description of public hearing procedures; (10) a discussion of boards and commissions; (11) various council adopted policies including the Code of Ethics and City Council funding policies; and (12) a glossary of municipal government terms and acronyms.

The City Attorney Subcommittee recommends that the City Council adopt the Handbook, but also wanted to seek additional City Council input on two issues related to the Handbook. First, the Handbook begins with a section dedicated to the City Council Vision and Goals. As the City Council has not recently adopted a statement of vision and goals, the item will require further City Council action. The Subcommittee recommends that the City Council consider and adopt a statement of vision and goals in January 2005. The vision and goals statement could then be reviewed annually by the City Council in January. The Subcommittee believed that timing in January was appropriate, as it would precede the City's annual budget process.

The Subcommittee and the City Attorney also recommend that the City Council specifically review the section of the Handbook identified as "Reimbursement for City Functions" to confirm that the procedures set forth therein for expenditures out of the discretionary funds for the mayor and councilmember are acceptable to the City Council.

Recommendation: Consider and adopt a motion to approve the draft City Council Handbook and direct staff to include consideration of a vision and goals statement on the City Council agenda in January 2005.

10. Receive Report Regarding Gateway Signs (Staff Contact: Tambri Heyden, 586-3280 and Mike McNeely, 586-3301)

Background: The City Council on August 3, 2004, requested a report on gateway signs for Milpitas. The Milpitas Streetscape Master Plan, adopted by Council on September 19, 2000, included 19 general locations and concepts for gateway and entry treatment opportunities (included in the Council agenda packets) – 7 freeway gateways, 3 major gateways (at city limits where roads lead into the city from the freeway exit), 5 minor gateways that cross over the city limits into adjacent neighborhoods, 3 destination/public transit points and 1 for Town Center. Generally, the master plan suggests monument signs with enhanced landscaping at entry points where space allows and encroachment permits can be obtained through Caltrans and the County. In special areas, streetscape amenities and art elements are mentioned, where appropriate.

Staff's efforts thus far towards implementing these aspects of the Streetscape Master Plan have resulted in the following:

- Construction of the 34-foot high entry monument at Tasman Drive/Alder Blvd.
- Development of gateway concepts for key entrances to Midtown, as well as streetscape plans for Main Street and Abel Street.
- Coordination with Caltrans and the Valley Transportation Authority to restore funding for landscaping of the I-880/Route 237 interchange.
- Design of the construction plans for a 63-foot high entry monument on the east side of McCarthy Blvd. adjacent to I-880 on the north end of the Irvine Ranch Property. Funding for construction, estimated at \$400,000 - \$500,000 has not been identified.
- Revised, as of last week, population figures on signs entering Milpitas with current data.

The next actions that can be taken to implement the remaining gateway and entry elements of the Streetscape Master Plan and address the objectives in creative ways are as follows:

- Finalize the details and design of the 237/880 landscaping including a public art element.
- Pursuant to the Streetscape Master Plan, develop a detailed and reasonable implementation plan including coordination with Caltrans and the County, verification of style, design, locations, schedule, cost estimates, and funding source identification.
- Investigate the use of the existing Great Mall signs on I-680 and I-880 as freeway gateway opportunities.
- Allow flexibility in the sign code for private development to better utilize freeway frontage for identification if well designed and combined with city freeway gateway signage.

Recommendation: Receive report and direct staff accordingly.

XVI. NEW BUSINESS

*** 11. Response to Grand Jury Reports: (1) Inquiry into Financial and Performance Audits for the County and Cities in the County and (2) Inquiry into Police Evidence Rooms in Santa Clara County (Staff Contact: Thomas Wilson, 586-3050)**

Background: Requests from Santa Clara County Grand Jury were received for: (1) Inquiry into Financial and Performance Audits for the County and Cities in the County and (2) Inquiry into Police Evidence Rooms in Santa Clara County. Responses are due to the Grand Jury by September 7, 2004.

Included in Council's packet are copies of recommended responses to each inquiry along with a background memorandum from Commander Rossetto through Chief Lawson and the requests received from the Grand Jury.

Recommendation: Approve responses for forwarding to Santa Clara County Grand Jury.

12. Consideration of Public Records Request for Employee Salary Information (Staff Contact: Steve Mattas, 586-3040)

Background: Through a recent communication, the Milpitas Post has requested that the City Council revisit the issue of the public records request submitted by the Milpitas Post for employee salary information. As the City Council may recall, the Milpitas Post submitted a public records request on March 26 asking the City to provide a document showing "each employees base salary for calendar year 2003, plus another column/row that shows all overtime, bonuses, commissions, add-ons, automobile, meal and entertainment reimbursements and the like, merit increases for added duties and obligations, incentive pay and special assignment pay, etc. for calendar year 2003." In a letter dated April 9th, I responded on behalf of the City and denied the request on the grounds that the City did not have such a document and the Public Records Act did not require the City to create a document in response to a request if the document did not already exist. That letter also advised the Milpitas Post that the City was further considering the Post's request for employee salary and gross earnings information in light of appellate court direction related to release of employee salary information.

Subsequently, and after direction from the City Council at its June 16 meeting, the City first advised the employee representatives of the anticipated response to the Post's request and then provided the response in a letter to the Milpitas Post dated July 2, 2004. After learning that the Milpitas Post apparently did not receive the July 2nd letter the first time it was sent, we sent another copy to the Milpitas Post via overnight mail. The information provided to the Milpitas Post included: (1) a listing by department of all City employees by name and title during calendar year 2003; (2) a listing of gross earning by job title (excluding peace officers) including base salary and other compensation such as allowances, overtime, deferred compensation and leave payouts; (3) a listing of the employer and employee PERS contribution percentages for the employee organizations; and a listing of salary ranges. With regards to those job titles (positions) with only one employee serving in the position, the information provided to the Post showed the gross compensation information for all such positions but did not specifically identify the associated position to a specific gross compensation amount.

In its recent communication, the Milpitas Post requests that the City revisit the issue and provide to it the information the Post requested. Upon review of the City Council discussions of the issue at the end of the meeting on June 15 and the direction provided at that time, I would also recommend that City Council affirm the direction it provided at the June 1 meeting. In the event that such direction requires disclosure beyond that already provided to the Milpitas Post, the City Council may also wish to direct that the employee organizations be again advised of the disclosure.

Recommendation: Consider the request and provide direction to the City Attorney regarding the information the City Council directs be disclosed in response to the request.

13. Presentation of Countywide Safely Surrendered Baby Program ("Safe Haven") for the Confidential Surrender of Newborn Infants (Staff Contact: Bill Weisgerber, 586-2811)

Background: The Safely Surrendered Baby Law (also known as the Safe Haven or Newborn Abandonment Law) went into effect January 1, 2001 and authorizes the Santa Clara County Board of Supervisors to designate locations where newborns (less than 72 hours) may be confidentially surrendered, by a parent or guardian having lawful custody of the child, without fear of criminal prosecution. These "safe havens" are a part of a countywide effort to end child abandonment.

According to Santa Clara County Department of Health Services there were 4 abandoned infants documented in Santa Clara County in 2003/2004. The actual number of such infants is unknown.

Until recently, Santa Clara County protocol only allowed for Safe Haven surrender at Hospital Emergency Departments. On August 3, 2004, the Santa Clara County Board of Supervisors passed a resolution which authorizes all Santa Clara County Fire District Stations as California Safe Havens and creates a County-wide Task Force of stakeholders to develop a program of funding, training, and implementation to include *all Fire Stations in the County*, adopted by local Council resolution.

Recommendation: Note receipt and file. Provide further direction to staff.

- * 14. **Amend Facility Use Policy for the Community Room at the Police Administration Building Limiting the Number and Duration of Reservations (Staff Contact: David Rossetto, 586-2405)**

Background: The Community Room at the Police Administration Building is a publicly accessible room that can be reserved by community groups for their private use. The City Council adopted rules governing the reservation and use of this room on February 18, 1992, revised on August 4, 1992, and again on May 6, 1997.

Recently, the Police Department has received requests from four separate community groups to reserve the room for specific days of the week for the entire year. This type of reservation can monopolize the use of the room by a limited number of groups. This type of reservation would impact those groups such as Homeowners Associations, Little League, etc., that typically hold one or two monthly meetings. We believe it was not the intent of Council to allow groups to reserve the room for an entire year.

We believe it is fair to allow groups two reservations monthly with confirmation no more than 60-days in advance. One reservation may include (2) consecutive days. This allows all groups fair opportunity to reserve the room and make necessary plans. The City Attorney's office was consulted and had no issues with a non-discriminatory, equally applied restriction.

It is requested that Item 14 be added to the existing Facility Use Policy and read as follows:

- 14. In no event shall any group or individual be allowed more than (2) Community Room reservations in a calendar month nor shall any reservation be longer than two (2) consecutive days. Reservations shall not be confirmed more than 60 days in advance.

Recommendation: Approve amendment of the facility use policy for the Community Room at the Police Administration Building to include the recommended reservation limitations.

- * 15. **Approve Budget Appropriation: Hall Park Walkway (Project No. 5058) (Staff Contact: Greg Armendariz, 586-3401)**

Background: On May 4, 2004, Council had awarded the construction contract to JW Riley & Son, Inc. for renovation of the walkway at Hall Park. The work consists of fencing, lighting, planting and irrigation for a walkway from the tennis courts at Hall Park across the two bridges to Abbott Avenue. The work is currently underway and planned to be completed by late September. There are three changes recommended by staff to the scope of work: 1) the widening of the pathway from five to eight feet, 2) the painting of the lagoon wooden bridge, and 3) the provision of power for the lagoon aerators. The cost estimate for these three change orders is estimated to be an additional \$30,000 and is required to complete the project. A budget appropriation is recommended for these three change and sufficient funds are available from the Park Fund.

Recommendation: Approve the budget appropriation of \$30,000 from the Park Fund into Capital Improvement Project 5058 Hall Park Walkway.

XVII. ORDINANCES

16. Introduction of Ordinance No. 263 adding a New Chapter 19 to Title V of the Milpitas Municipal Code Prohibiting the Use of Vehicles for Human Habitation (Staff Contact: Dennis Graham, 586-2502)

Background: In February of 2004, several Milpitas citizens complained about a man living and sleeping in a pick-up truck parked on a residential street. Officers arrested the man for public intoxication, but after his release from jail he began living in his pick-up truck on a street in another residential neighborhood, resulting in additional complaints from citizens, one of whom appeared before the City Council to request that an ordinance be implemented prohibiting human habitation of vehicles on residential streets. Currently, there is no city ordinance, nor any other law, that prohibits persons from living in vehicles on residential streets.

Police staff surveyed several Bay Area cities and found that some have adopted ordinances regulating or prohibiting the use of vehicles for human habitation. Prohibiting and regulating the use of vehicles for human habitation by adding new Chapter 19 to Title V of the Milpitas Municipal Code would enable the Police Department to address this issue more efficiently.

Recommendation:

1. Waive reading beyond the title.
2. Introduce Ordinance No. 263.

*** 17. Adopt Ordinance No. 265 adding Chapter I-40 to the Milpitas Municipal Code and Establishing the Ethics Evaluation Panel (Staff Contact: Tambri Heyden, 586-3280)**

Background: Ordinance No. 265 was introduced at the August 3, 2004, City Council meeting. The ordinance establishes a process and an ethics evaluation panel to handle ethics complaints. At the August 3, 2004, meeting, the Council requested two changes to the ordinance. The first change was to allow an ethics complaint meeting date that is later than 3 business days following the Clerk's receipt of the complaint if agreed upon by the Lead Ethics Evaluator and the accused. That change is found on line 17 in Section I-40-16.A. The second change requested was to allow the Ethics Evaluation Panel the option of continuing the ethics complaint meeting if more information or further deliberation is needed in order to make a decision. That change is found in the last sentence of Section I-40-16.B.

Recommendation:

1. Waive full reading of the ordinance.
2. Adopt Ordinance No. 265.

XVIII. RESOLUTIONS

*** 18. Adopt Resolution of Intention to Vacate a Portion of North Main Street/Railroad Avenue, Weller Lane, and Winsor Street for Improved Roadway Alignment Purposes (Staff Contact: Mehdi Khaila, 586-3328)**

Background: The development on the northeast corner of North Main Street and Weller Lane requires that portions of North Main Street/Railroad Avenue, Weller Lane, and Winsor Street be vacated. It has recently been determined that the closure of Weller Lane in its entirety, east of N. Main Street, and the northern portion of Winsor Street would be consistent with the long-term plan for the redevelopment of this area, as envisioned in the Midtown Specific Plan. The long-term plan

includes a denser urban design with a mixture of uses: retail, residential and public uses, including the future library.

The vacation is for roadway purposes only and the existing utility easements within the subject roadway segments will be vacated after all existing public utilities are relocated. A Negative Declaration (EIA No. EA2003-1), which reviewed a portion of the vacations, was adopted by the City Council on July 1, 2003. Since this review, the southern portion Weller Lane and the northern portion of Winsor Avenue have been added to the partial vacation. It has been determined that no new significant environmental effects will result. Therefore, an addendum to the Negative Declaration has been prepared for the additional roadway vacation.

The Planning Commission found the partial vacations to be in conformance with the General Plan on May 26, 2004, and August 11, 2004. The resolution sets a public hearing at the October 5, 2004, City Council meeting for public roadway vacation.

Recommendation:

1. Adopt the Addendum to the Negative Declaration (EIA No. EA2003-1).
2. Adopt a Resolution of Intention to vacate portions of North Main Street/Railroad Avenue, Weller Lane, and Winsor Street for improved roadway alignment purposes.

*** 19. Adopt Resolution Granting Final Acceptance: Parallel Force Main Project (Project No. 6078) (Staff Contact: Greg Armendariz, 586- 3401)**

Background: This project provided a 36-inch diameter sanitary sewer force main with multiple valves, and was initially accepted by City Council on August 5, 2003. The one-year project warranty period has passed. Staff conducted a final project inspection and has determined the work to be satisfactory. Therefore, the Council may grant final acceptance and the contractor's bond may be released.

Recommendation: Adopt resolution granting final acceptance and release of the contractor's bond.

XIX. BIDS AND CONTRACTS

*** 20. Approve Agreement Amendment: Camp Dresser & McKee for Professional Engineering Services Supporting the Solid Waste Program (Staff Contact: Darryl Wong, 586-3345)**

Background: BFI has recently submitted extraordinary costs charges that occurred during the year 2003 due to compliance with regulatory measures. Under our agreement, BFI is eligible for reimbursement of these costs. Staff is requesting independent review of proposed charges to verify accuracy for the costs. Camp Dresser & McKee (CDM) is already reviewing the 2003 Subtitle D improvements currently for San Jose.

On July 6, 2004, Council approved professional services amendment #2 with CDM for review of the 2001 and 2002 Subtitle D charges.

Based upon the City's satisfactory past experience with CDM, its current review of the 2001 and 2002 improvements for Milpitas and the 2003 improvements for San Jose which minimizes learning curve costs, staff recommends continuing with that firm for the independent review. Staff has negotiated an agreement for additional services at a not-to-exceed fee of \$8,500, bringing the total contractual not-to-exceed amount to \$58,500. Sufficient funding has been allocated in the Engineering budget for these services.

Recommendation: Authorize the City Manager to execute the consultant agreement amendment for additional services for \$8,500, bringing the total not-to-exceed amount to \$58,500, with Camp Dresser & McKee, subject to approval as to form by the City Attorney.

- * **21. Approve Revised Core Natural Gas Sales and Aggregation Agreement with ABAG Power (Staff Contact: Emma Karlen, 586-3145)**

Background: The City of Milpitas has been a member of ABAG POWER and participant of the Natural Gas Program since 1996. ABAG POWER provides coordination services for the purchase and management of natural gas supply and transportation. It also handles gas imbalances, gas storage and other operation transactions on behalf of its members. Recently, the ABAG POWER Executive Committee completed a review of the Natural Gas Program and recommended that the Program continue for an additional three years. In addition, in an effort to maintain cost savings and price stability, ABAG POWER revised the Core Natural Gas Sales and Aggregation Agreement to institute a three-year “Rolling Evergreen” arrangement for members wishing to opt-out of the program. In essence, members must give ABAG POWER three-year advance notice in order to withdraw from the program. This arrangement will allow more flexibility for ABAG POWER to enter into longer-term contracts to lock in gas price. ABAG POWER has been effective in its management of the Natural Gas Program and provides expertise to its member in analyzing natural gas supply and transportation strategies.

Recommendation: Approve the revised Core Natural Gas Sales and Aggregation Agreement with ABAG POWER and authorize the City Manager to execute the Agreement, subject to approval as to form by the City Attorney.

- * **22. Approve Encroachment Permit Agreement with TCG San Francisco, a New York General Partnership (Project No. 2381) (Staff Contact: Mehdi Khaila, 586-3328)**

Background: TCG San Francisco is regulated by the Public Utilities Commission (PUC) and is requesting an encroachment permit agreement to install fiber optic cable into existing Pacific Bell's conduits within the City's right-of-way. The existing conduits are within Murphy Ranch Road, McCarthy Boulevard and Montague Expressway connecting to Trimble Road in the City of San Jose.

Recommendation: Approve Encroachment Permit Agreement and authorize the City Manager to execute the same, subject to the approval by the City Attorney as to form.

- * **23. Approve Right of Entry Permit to Department of Water Resources (DWR) of the State of California: Water Line Repair within Piedmont Road (Project No. 3174) (Staff Contact: Mehdi Khaila, 586-3328)**

Background: The State Department of Water Resources is requesting a Right of Entry Permit to enter with all necessary equipment on a portion of Piedmont Road between Pinard Road and Landess Avenue to relocate, replace and repair a 300-foot long section of its existing water line. Most of the work will be on the West side of the Piedmont Road and the two-way thru traffic will be maintained on the east side of the road during the construction. The work is scheduled to occur between October 1, 2004, and December 22, 2004, and will require a traffic detour such that both north and south bound vehicles will utilize the easterly one-half of the roadway during construction.

Recommendation: Approve Right of Entry Permit with DWR for the necessary work to their line. Authorize City Engineer to execute the Right of Entry Permit subject to approval as to form by the City Attorney.

- * 24. **Approve Agreement Extension for Sidewalk, Curb, and Gutter Repairs: Robert A. Bothman, Inc. (Project No. 4067) (Staff Contact: Lou Zenzen, 586-3161)**

Background: Robert A. Bothman, Inc. was awarded an agreement to repair City sidewalks, curbs and gutters on July 14, 1999. The agreement has an option to renew it for an additional five single years provided the services rendered met the City's requirements. Robert A. Bothman, Inc. has done a more than adequate job repairing the sidewalks, curbs and gutters and is willing to keep the square foot pricing at the same rate as last year.

A one year extension of the agreement to June 30, 2005 is proposed in the amount not to exceed \$175,000.00. There are sufficient funds in the Annual Sidewalk Replacement project (Project No. 4067) budget for this repair service.

Recommendation: Authorize the City Manager to execute an amendment to extend the agreement one additional year with the Robert A. Bothman, Inc. to June 30, 2005, in an amount not to exceed \$175,000.00, subject to approval as to form by the City Attorney.

- * 25. **Authorize the City Manager to Execute the Agreement with Orsee Design Associates: Median Landscape on McCarthy Blvd., Associated with the 237/I-880 Interchange Project (Project No. 4170) (Staff Contact: Mike McNeely, 586-3301)**

Background: As the construction activities of 237/I-880 (Interchange) project nears completion, staff is now recommending that median landscaping be provided on McCarthy Boulevard, between 237/I-880 and Ranch Drive.

Staff has negotiated a fee with Orsee Design Associates for landscape design services. Their proposed fee not to exceed \$9,500.00, which is considered reasonable for the work. There are sufficient funds in the project budget to cover this cost.

Recommendation: Authorize the City Manager to execute the agreement with Orsee Design Associates, in the amount not to exceed \$9,500.00, subject to approval as to form by the City Attorney.

- * 26. **Approve an Agreement with Peelle Technologies for Programming Services and Software Licensing to Expand the City of Milpitas' Document Imaging System to Include Public Internet Access to Non-Confidential Documents (Project No. 8131 – Information Management) (Staff Contact: Terry Medina, 586-2703)**

Background: For Fiscal Year 1999/2000, Council approved funding of \$96,300 in a Capital Improvement Program (CIP) for conducting a pilot project for the implementation of a Document Imaging System. The imaging system would allow City staff to comprehensively store, locate and manage all City related information through the use of document imaging, optical character recognition (OCR), database, and workflow technologies.

In 2001, the City implemented a document imaging system using proprietary software and the services of a local vendor. Since the original implementation the City has already scanned or converted over 2,000,000 images into the document imaging system that are available on the City's network for retrieval and review by staff.

During the summer of 2003, City Council began discussing the concept of allowing the public access to non-confidential documents at the Self Help workstations located on the 1st and 3rd floors of City Hall. Additionally, Council expressed an interest in making non-confidential information available to the public 24 hours a day 7 days a week via the Internet.

The City's document imaging system can provide the capability to retrieve documents that have been scanned or converted from microfilm for the public to access at both the Self Help

workstations or through the Internet. Two of the challenges involved in providing access to this information are in the area of data security and the establishment of a data communications link between the customer's workstation and the City's network. Additionally, since the imaging software is proprietary there is the need to provide sufficient software licenses to allow multiple customers to retrieve the imaged documents.

During the past year, City staff continued to increase the number of scanned images that are available for their use electronically. In addition, Information Services staff has worked internally, and with the City's document imaging vendor to develop a solution that will address the areas of data security and accessibility to the imaged documents. At this time, a solution has been developed and work has begun on a Global Information System that will be accessible to the public via the Internet and at the Self Help workstations located at City Hall.

In order to implement the Global Information System it is necessary to enter into an agreement to provide the necessary programming services and to purchase additional software licenses. Peelle Technologies, the City's document imaging vendor, has provided a quote and a statement of work for the development of the Global Information System. The quote is comprised of two components: programming services and software licensing. The cost for programming services will not exceed \$8,000. The cost for software licensing that will allow up to 74 users to access the document images via the Internet or at the Self Help workstations at City Hall will not exceed \$33,000. The total cost for services and software licensing will not exceed \$ 41,000. Funding is available in CIP 8131 (Information Management).

Approval of the agreement with Peelle Technologies will provide the City with a system that allows up to 74 users to view non-confidential documents at the Self Help workstations located in City Hall or at any computer via the Internet.

Recommendation: Authorize the City Manager to execute an agreement with Peelle Technologies in an amount not to exceed \$41,000 subject to approval as to form by the City Attorney.

*** 27. Award Bid for Annual Landscape Maintenance Service (Staff Contact: Lou Zenzen, 586-3161)**

Background: Staff issued a Request for Proposal for annual landscape maintenance services on the McCarthy Ranch Assessment District 95-1. The work consists of turf mowing, shrub pruning, annuals and perennials planting, irrigation management, fertilizing, weed and pest control and other related services to keep the planted and turf areas visually pleasing during all seasons.

An RFP for these services was issued to 14 landscape maintenance companies on Purchasing's bidders list. Site visits were conducted to familiarize the companies with the layout of the types of areas to be maintained, seven firms responded with proposals ranging from \$27,260 to \$151,379 for annual services.

A five panel evaluation committee review the proposals for quality, responsiveness, demonstrated competence, professional qualifications, recent experience in similar services, approaches in completing the scope of work, references and cost. Coast Landscape Management received the highest score for providing these services. Coast was interviewed, their qualifications and abilities to maintain the area was addressed and staff felt they are highly qualified to perform the maintenance. References were also checked and Coast received high praise for the quality of work they are currently doing with other agencies and private companies.

Sufficient funding has been allocated in the Public Works Department operating budget for the annual landscape maintenance services to fund Coast Landscape Management's cost of \$76,074.00.

Recommendation: Authorize the City Manager to execute a contract with Coast Landscape Management in an annual amount not to exceed \$76,074.00 for landscape maintenance services at the McCarthy Ranch Assessment District 95-1, subject to approval as to form by the City Attorney.

*** 28. Award Bid for Sycamore Tree Pruning (Staff Contact: Lou Zenzen, 586-3161)**

Background: Staff requested quotations from bay area certified arborist firms to perform annual street tree pruning of the 850 Sycamore trees on McCarthy Blvd., between Highway 237 and Dixon Landing Rd., and disposal of trimmings. The following is the recap of bids received from the three vendors that responded including tax:

<u>Bidder</u>	<u>Amount</u>
Anderson's Tree Care	\$38,250.00
Arbortek Tree Services	\$39,100.00
West Coast Arborists, Inc.	\$41,650.00

There are sufficient funds available in the Landscape Maintenance Section operating budget for these services.

Recommendation: Award the bid for the annual street tree pruning of the Sycamore trees to the lowest bidder, Anderson's Tree Care in the amount of \$38,250.00.

*** 29. Award Bid for Replacement Traffic Signal Cabinets (Project No. 4220) (Staff Contact: Lou Zenzen, 586-3161)**

Background: Staff requested quotations from the only three traffic signal cabinet distributors in the Bay Area to replace ten existing cabinets at intersections throughout the City over a two-year period. The existing cabinets are no longer being produced and finding parts to repair them is getting more difficult. Typically parts that have been found must be retrofitted or modified in order install them in the old cabinets. The new cabinets are pre-wired to City specifications and will be installed by staff over the two-year period. The following is the recap of bids received from the two vendors that responded including tax and freight:

<u>Bidder</u>	<u>Amount</u>
Synchronex, Inc.	\$49,950.00
US Traffic Corp	\$57,032.00

There are sufficient funds available in the Traffic Signal Cabinet Replacement Program (Project No. 4220) project budget for the purchase of the cabinets.

Recommendation: Award the bid for the purchase of the traffic signal cabinets over the next two years to the lowest bidder, Synchronex, Inc. in the amount of \$49,950.00.

*** 30. Authorize the City Engineer to Execute a Contract Change Order: 2004 Street Resurfacing Project (Project Nos. 4182 & 4223) (Staff Contact: Doug DeVries, 586-3313)**

Background: The City Council awarded this project to C. F. Archibald Paving, Inc. on July 7, 2004, and construction is underway. The completed project will provide new pavement for various City streets, and the anticipated completion date is October 11, 2004.

Staff recommends that additional work to repair pavement failure on Serra Way at the intersection of Calaveras Boulevard and to slurry seal Calle Oriente be included in the project. Staff has negotiated a fee not to exceed \$57,000 with the Contractor for this additional work, and the

approval of a contract change order is requested. Sufficient funds are available in the project budget for this change order.

Recommendation: Authorize the City Engineer to execute the Contract Change Order for C. F. Archibald Paving, Inc. in the amount of \$57,000.

XX. CLAIMS AND DEMANDS

- * **31. Approve Payment Request by Calprop Corporation: Parc Metropolitan Development East Park, East Curtis Avenue (Project No. 3061) & (Project No. 7076) (Staff Contact: Mehdi Khaila, 586-3329)**

Background: Calprop Corporation is currently under construction of a public park at the east end of Curtis Avenue as a condition of development. The park design had to be revised to allow the City to drill a well and pump station within the proposed park site. Calprop has submitted a request for payment in the amount of \$15,179.18 for the redesign work. Staff finds the amount to be reasonable and there are sufficient funds in the well project budget.

Recommendation: Approve payment request by Calprop Corporation in the amount of \$15,179.18.

- * **32. Approve Payment of Fireworks for the 4th of July Event (2004) (Staff Contact: Bonnie Greiner, 586-3227)**

Background: The Fourth of July is traditionally marked by a spectacular display of fireworks. To commemorate the City of Milpitas' 50th anniversary, this display was enhanced by a personalized introduction preceding the fireworks show, and an additional 100 shells added to the grand finale. The cost for the fireworks was still \$500 under the budgeted amount of \$20,000.

Recommendation: Approve Recreation Services' request to pay the invoice to "Pyro Spectaculars" in the sum of \$19,500 per the contractual agreement between the City of Milpitas and this company for goods and services provided on July 4, 2004 at the 4th of July "Red, White and Boom" event.

- * **33. Approve Payment of the Cal-ID Invoice to the City of San Jose in the Amount of \$56,386 (Staff Contact: David Rossetto, 586-2405)**

Background: CAL-ID is an automated fingerprint storage and retrieval system that enhances investigative procedures for law enforcement agencies in Santa Clara County. In 1989, the City Council adopted a resolution for the City of Milpitas to enter into an annual agreement with the County and other local cities to participate in the CAL-ID system. The City Council at its November 6, 2000 meeting adopted Resolution 7038, which allows the CAL-ID system to be operated from year to year without being subject to annual amendment, updates the prior agreement, and formalizes the existence and regulates the use of reserve funds.

Milpitas' share of the annual cost is \$56,386 for fiscal year 2004-2005. This amount represents a decrease of \$1,045 from FY 2003-2004. Funds for this have been included in the 2004-2005 Police Department budget.

Recommendation: Approve CAL-ID invoice to the City of San Jose in the amount of \$56,386.

- * **34. Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Lou Zenzen, 586-3161)**

Background: In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$12,008.88 to FJM Bering Truck Center for emergency transmission repairs to fire engine 40 for the Fleet Maintenance Section. (Funds are available from the Public Works Department operating budget for this repair.)
2. \$6,040.35 to Edward S Walsh Co. for the purchase of twelve 2" multi-head water meters to replenish depleted warehouse stock for the Utility Maintenance Section. (Funds are available from the Public Works Department operating budget for this purchase.)
3. \$6,765.00 to Konica-Minolta Business Solutions for annual lease payments for five mid sized copiers located at City Hall, Public Works and the Police Department. (Funds are available from various departments' operating budget for this payment.)
4. \$11,025.00 to the MWH Laboratories for State mandated HAAS and THM water quality analysis for the current fiscal year for the Utility Maintenance Section. (Funds are available in the Public Works Department operating budget for this service.)
5. \$5,639.42 to Roberts and Braun for the purchase of 28 water and sewer line repair clamps to replenish depleted warehouse stock for the Utility Maintenance Section. (Funds are available in the Public Works Department operating budget for this purchase.)
6. \$5,084.18 to ACCO Systems for the emergency replacement of a HVAC compressor in the City Hall telephone room for the Facility Maintenance Section. (Funds are available in the Public Works Department operating budget for this emergency repair.)
7. \$5,200.00 to the Milpitas Post to publish Claire Water cartoons every other week for a year to promote the urban runoff program for Utility Engineering Section. (Funds are available in the Engineering Division operating budget for these services.)
8. \$14,190.00 to Alliance Occupational Medicine for new hire exams, DMV medical exams/DOT testing, Workers' Comp exams and first aid medical services for the Human Resources Department. (Funds are available in the Human Resources Department operating budget for these services.)
9. \$6,469.14 to Decision Systems for annual hardware and software maintenance on the EOC Teleminder notification system for the Fire Department. (Funds are available in the Fire Department operating budget for these services.)

Recommendation: Approve the purchase requests.

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, SEPTEMBER 7, 2004, AT 7:00 P.M.**

CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
August 3, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION

(Pursuant to Government Code Section 54956.9[a])

Name of case: McGuire & Hester v. City of Milpitas, Santa Clara Superior
Court Case No. 104CV016478

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

(Pursuant to Government Code Section 54956.8)

Property: 94, 110 and 130 Winsor Avenue (APNs 028-24-014 and 028-24-015) and 112 North Main St.
(APN 028-024-026) and (APN 028-024-020)

Negotiating Parties: Milpitas Redevelopment Agency and Dorothy A. & Ruth A. Winsor

Agency Negotiators: Thomas J. Wilson and Blair King

Under negotiation: Terms and Conditions for disposition or lease.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

(Pursuant to Government Code Section 54956.8)

Property: 86 North Main Street, APN 028-024-025

Negotiating Parties: Milpitas Redevelopment Agency and Juan J. Rodriguez and Rose E. Rodriguez
Trustees of the The Juan and Rose Rodriguez Family Trust, dated December 18, 2001

Agency Negotiators: Thomas J. Wilson and Blair King

Under negotiation: Terms and Conditions for disposition or lease.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Pursuant to Government Code Section 54956.9[a])

Title: Arechiga v. City of Milpitas (WCAB No. WCK 0211975 & WCK 024886)

CONFERENCE WITH LABOR NEGOTIATOR

(Pursuant to Government Code Section 54957.6)

Agency Negotiators: Eddie Kreisberg and Cherie Rosenquist

Employee Organization: LIUNA

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES: July 6, 2004

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

- ICC ArtICCUlators Toastmasters Club #584244, recipient of President's Distinguished Club status
- Eagle Scouts: Casey Pham, John Pham, Andre Pham, and Khang Truong

- Milpitas Bobbysox – Recognition of National Tournament of Champions, August 7-11, 2004

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. APPROVAL OF AGENDA

XI. CONSENT CALENDAR (Items with Asterisks)

XII. PUBLIC HEARINGS

1. **Adopt Resolution Confirming Assessments: Weed Abatement Report and Assessment List (Staff Contact: Albert Zamora, 586-3371)**
2. **Continue the Amended Density Bonus, "S" Zone Approval Amendment No. SA2004-7, Use Permit Amendment No. UA2004-2 and Land Exchange Agreement for Apton Plaza – 230 North Main Street (Staff Contact: Staci Pereira, 586-3278)**

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: July 6, 2004

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

RA5. Approve Recommendation From the Library Subcommittee to Approve Agreement: Group 4 Architecture Research + Planning, Inc., Library Design, (Project Nos. 3394 & 8162) (Staff Contact: Mark Rogge, 586-3403)

***RA6. City of Milpitas Investment Portfolio Status Report for the Quarter Ended June 30, 2004 (Staff Contact: Emma Karlen, 586-3145)**

***RA7. Approve Agreement Amendment: Lowney Associates, Milpitas Library Predesign, Project No. 3394, (Staff Contact: Steve Erickson, 586-3414)**

***RA8. Authorize City Manager to Execute Agreement Amendment and Approve Budget Appropriation: JMH Weiss, Inc., Abel Street Midtown Improvements, Project No. 8157, (Staff Contact: Mark Rogge, 586-3403)**

***RA9. Approve Subdivision Improvement Agreement, with Final Map, Public Improvement Plans, Encroachment Permit Agreement with Western Pacific Housing, Inc. for PARC Place Condominiums and Budget Appropriation for Reimbursement of E. Curtis Avenue Improvements, E. Curtis Avenue, Tract No. 9569, Development Project No. 3169, Capital Improvement Project No. 8169 (Staff Contact: Mehdi Khaila, 586-3328)**

RA10. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

- 3. Project Lifesaver Presentation and Consideration of a Contribution: Mayor Esteves (Staff Contact: Americo Silvi, 586-2810)**
- 4. Determine Process for Making an Appointment to the Planning Commission to Fill Vacancy Due to Resignation of Dem Nitafan: Mayor Esteves**
- * 5. Approve the Mayor's Appointments to the Citizens Emergency Preparedness Advisory Commission, Library Advisory Commission, Recycling and Source Reduction Advisory Commission, and the Youth Commission: Mayor Esteves**

Economic Development Commission

- * 6. Approve Prioritization of Subcommittee Plans: Economic Development Commission: Mayor Esteves (Staff Contact: Cindy Maxwell, 586-3282)**

XV. UNFINISHED BUSINESS

- * 7. Odor Control Comprehensive Action Plan Update (Staff Contact: Darryl Wong, 586-3345)**
- * 8. Approve Concept for Installation and Maintenance of Landscaping for I-880/Route 237 Interchange, (Staff Contact: Mike McNeely, 586-3301)**

XVI. NEW BUSINESS

- * 9. Receive Information on Association of Bay Area Governments (ABAG) Sewer Device Program (Staff Contact: Darryl Wong, 586-3345)**
- * 10. Approve Filling Vacant Positions: Chief Building Official, Senior Building Inspector, Purchasing Agent, and Secretary (Staff Contact: Cherie Rosenquist, 586-3082)**

XVII. ORDINANCES

- 11. Introduce Ordinance No. 265 Adding Chapter I-40 to the City of Milpitas Municipal Code to Establish the Ethics Evaluation Panel (Staff Contact: Tambri Heyden, 586-3280)**
- 12. Adoption of "Open Government" Ordinance No. 262 Establishing Regulations Governing the Conduct of Elected and Appointed Officials and Required Disclosure of Interests and Contacts (Staff Contact: Steve Mattas, 586-3040)**

XVIII. RESOLUTIONS

- 13. Adopt Resolution Establishing a Re-Adjusted Fee Schedule for Building Division Services (Staff Contact: Kevan Irannejad, 586-3244)**
- * 14. Adopt Resolution Granting Partial Initial Acceptance: Great Mall Parkway Street Trees and Median Mulch Renovation, (Project No. 4133), (Staff Contact: Doug DeVries, 586-3313)**
- * 15. Adopt Resolution Granting Initial Acceptance: Selwyn Park Improvements, Project No. 5078, (Staff Contact: Doug De Vries, 586-3313)**

- * 16. **Adopt Resolution Granting Partial Initial Acceptance: Piedmont / 237, Tract 9148, (Project No. 3064) (Staff Contact: Mehdi Khaila, 586-3328)**
- * 17. **Adopt Resolution of Local Support and Approve Budget Appropriation: South Park Victoria Drive Pavement Rehabilitation, Phase 1, Project No. 4225, (Staff Contact: Doug De Vries, 586-3313)**

XIX. BIDS AND CONTRACTS

- * 18. **Authorize the City Manager to Execute Memorandum of Understanding with Union Pacific Railroad and Santa Clara County for the Repair of the Railroad Crossing at Montague Expressway, Montague Widening (Project No. 4179) (Staff Contact: Mike McNeely, 586-3301)**
- * 19. **Approve Joint Use Agreement with PG&E for Easements: Dixon/I-880 Interchange Project (Project No. 4047) (Staff Contact: Mike McNeely, 586- 3301)**
- * 20. **Approve Agreement for Purchase of Real Property, N&M Plaza, LLC; Abel Calaveras Right Turn Lane Project, (Project No. 4186) (Staff Contact: G. Armendariz, 586-3401)**
- * 21. **Authorize the City Manager to Execute Agreement with Damon S. Williams Associates, Water System Seismic Improvements, Project No. 7100, (Staff Contact: Doug De Vries, 586-3313)**
- * 22. **Approve Contract Amendment with Valley Oil Company for Fuel Purchases (Staff Contact: Lou Zenzen, 586-3161)**
- * 23. **Approve Renewal of Annual Software Support and Maintenance Fees with Actuate Corporation for the Reporting System used by the Finance System through June 30, 2005 (Staff Contact: Terry Medina, 586-2703)**
- * 24. **Approve Renewal of Annual Software Support and Maintenance Fees with Cayenta for the Financial System through June 30, 2005 (Staff Contact: Terry Medina, 586-2703)**
- * 25. **Authorize Purchase of Equipment for the Construction Projects Team (Project No. 8134), (Staff Contact: Terry Medina, 586-2703)**
- * 26. **Approve Renewal of Annual Software Support and Maintenance Fees with American Management Systems, Inc. for the Budget System through June 30, 2005 (Staff Contact: Terry Medina, 586-2703)**
- * 27. **Award Bid for Epoxy Floor Coating Application for Fleet Maintenance Garage, Project No. 8150, (Staff Contact: Lou Zenzen, 586-3161)**
- * 28. **Approve Installation of Emergency Power Generator at Mission Ridge Radio Site by Mission City Contractors (Staff Contact: David Rossetto, 586-2405)**

XX. CLAIMS AND DEMANDS

- * 29. **Authorize Purchase Orders to Meyers Nave for Legal Services (Staff Contact: Steve Mattas, 586-3040)**
- * 30. **Approve Contract Change Order to McGuire Hester: South Bay Water Recycle, Project No. 6093, M-4 (Staff Contact: Mike McNeely, 586-3301)**
- * 31. **Approve Payment Requests: Miscellaneous Vendors/Contractors (Staff Contact: Lou Zenzen, 586-3161)**

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, AUGUST 17, 2004, AT 7:00 P.M.**

**CITY OF MILPITAS
Agenda Reports
Milpitas City Council Meeting
August 3, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard**

XII. PUBLIC HEARINGS

1. ADOPT RESOLUTION CONFIRMING ASSESSMENTS: WEED ABATEMENT REPORT AND ASSESSMENT LIST (STAFF CONTACT: ALBERT ZAMORA, 586-3371)

BACKGROUND: In accordance with Chapter 202, Title V (Weed Abatement), of the Milpitas Municipal Code, the County Fire Marshal has filed with the City Clerk a report and assessment list on weeds abated within the City. The report has been posted and notice of hearing posted and published.

The City's Ordinance provides that the City Council "shall hear the report together with any objections of the property owner liable to be assessed....and make such modifications on the proposed assessments as it deems necessary.." After confirmation by Council resolution, the resolution will be recorded and charges thereon become a lien on the land involved to be collected in the same manner as property taxes. A copy of the assessment list and the proposed resolution are included in the Council's agenda packet.

RECOMMENDATION:

1. Close the public hearing.
2. Adopt resolution confirming assessments.

2. CONTINUE THE AMENDED DENSITY BONUS, "S" ZONE APPROVAL AMENDMENT NO. SA2004-7, USE PERMIT AMENDMENT NO. UA2004-2 AND LAND EXCHANGE AGREEMENT FOR APTON PLAZA – 230 NORTH MAIN STREET (STAFF CONTACT: STACI PEREIRA, 586-3278)

BACKGROUND: This item was continued at the July 6, 2004, City Council meeting because staff was unable to meet with the applicant and his attorney to come to agreement on the Land Exchange Agreement. This meeting has occurred, however, the applicant is requesting a continuance in order to allow time to review revisions to the Land Exchange Agreement. The Land Exchange Agreement is part of the necessary Council actions because it is integral to the entitlements for this project in that the submitted site plan is dependent on the proposed land swap and is related to the Conditions of Approval. This continuance should allow sufficient time for staff and the applicant to come to agreement on these documents in time for the Council's meeting on August 17, 2004.

RECOMMENDATION:

1. Keep the public hearing open.
2. Continue the amended Density Bonus, "S" Zone Approval Amendment No. SA2004-7, Use Permit Amendment No. UA2004-2 and Land Exchange Agreement to August 17, 2004.

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: July 6, 2004

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

RA5. APPROVE RECOMMENDATION FROM THE LIBRARY SUBCOMMITTEE TO APPROVE AGREEMENT: GROUP 4 ARCHITECTURE RESEARCH + PLANNING, INC., LIBRARY DESIGN, (PROJECT NOS. 3394 & 8162) (STAFF CONTACT: MARK ROGGE, 586-3404)

BACKGROUND: This project is included in the current five-year Capitol Improvement Program (CIP). The completed project will provide the design of the new library, including construction plans and specifications for advertisement of construction bid proposals. The new library will be located at 160 N. Main St., and will incorporate the historic grammar school facility.

Staff interviewed nine professional architectural consultants in conformance with the City's consultant selection process, and recommended the three highest ranked firms be interviewed further by the Library Subcommittee. The firm of Group 4 Architecture Research + Planning, Inc. (Group 4) was recommended by the Library Subcommittee on June 14, 2004, at the conclusion of their interview process.

Subsequently to Council authorization on July 6, 2004, a scope and fee was negotiated with Group 4 for the required library architectural design services. The contract amount is not to exceed \$3,474,000, including design fee, reimbursable expenses and additional services, which is considered reasonable for the scope of work. There are sufficient funds in the project budget to cover this expense.

The Library Subcommittee reviewed key provisions of the contract at their meeting on July 27, 2004, and recommended that the City Council approve the contract with Group 4 Architecture for Library Design, in an amount not to exceed \$3,474,000, subject to City Attorney approval. A draft copy of the contract is included in the Council's agenda packet. Staff will provide a brief presentation on the contract highlights.

RECOMMENDATION: Approve the consulting services agreement with Group 4 Architecture Research + Planning, Inc. for Library design, in the amount not to exceed \$3,474,000, subject to approval as to form by the City Attorney.

***RA6. CITY OF MILPITAS INVESTMENT PORTFOLIO STATUS REPORT FOR THE QUARTER ENDED JUNE 30, 2004 (STAFF CONTACT: EMMA KARLEN, 586-3145)**

BACKGROUND: In compliance with the State of California Government Code and the City's Investment policy, the City of Milpitas Investment Report for the quarter ended June 30, 2004, is submitted for Council/Agency review and acceptance.

The Portfolio Summary Report included in the Council's packet provides a summary of the City's investments by type. It lists the par value, market value, book value, percentage of portfolio, term, days to maturity and the equivalent yields for each type of investment. The Portfolio Details Report provides the same information for each individual investment in the City's portfolio as of June 30, 2004.

As of June 30, 2004, the principal cost and market value of the City's investment portfolio was \$278,369,835 and \$277,706,237 respectively. When market interest rates increase after an investment is purchased, the market value of that investment decreases. Conversely, when market interest rates decline after an investment is purchased, the market value of that investment increases. If the investments are not sold prior to the maturity date, there is no market risk. Therefore, in accordance with the City's investment policy, all investments are held until maturity to ensure the return of all invested principal.

The City's effective rate of return for the period ended June 30, 2004 was 2.76%. The comparative benchmarks for the same period were 1.22% for LAIF (Local Agency Investment Fund) and 2.01% for the average 2 year Treasury Note. Excluding the long-term GNMA securities and Repurchase Investment Agreement, the weighted average maturity of the portfolio was 683 days.

The investment portfolio is in compliance with the City's investment policy. A combination of securities maturing, new revenues, and tax receipts will adequately cover the anticipated cash flow needs for the next six months. Cash flow requirements are continually monitored and are considered paramount in the selection of maturity dates of securities.

RECOMMENDATION: Note, receipt, and file the investment report for the quarter ended June 30, 2004.

***RA7. APPROVE AGREEMENT AMENDMENT: LOWNEY ASSOCIATES, MILPITAS LIBRARY PREDESIGN, PROJECT NO. 3394, (STAFF CONTACT: STEVE ERICKSON, 586-3414)**

BACKGROUND: On April 6, 2004, City Council approved an agreement with Lowney Associates to provide professional environmental and geotechnical consultation services at the main sewage pump station. Staff now recommends Lowney Associates provide Phase II testing for properties to be acquired for the new library and parking garage. Staff has negotiated a scope and fee with Lowney Associates for the necessary services, based on time and materials for an amount not to exceed \$20,000. The fee is considered reasonable for the work involved, and there are sufficient funds in the project budget to cover this cost.

RECOMMENDATION: Authorize the City Manager to execute the agreement amendment with Lowney Associates, in the amount of \$20,000, subject to approval as to form by the City Attorney.

***RA8. AUTHORIZE CITY MANAGER TO EXECUTE AGREEMENT AMENDMENT AND APPROVE BUDGET APPROPRIATION: JMH WEISS, INC., ABEL STREET MIDTOWN IMPROVEMENTS, PROJECT NO. 8157, (STAFF CONTACT: MARK ROGGE, 586-3403)**

BACKGROUND: On March 25, 2004, the City Council awarded a consultant contract to JMH Weiss, Inc. to provide base mapping, utility mapping, and to design street improvements on Abel street from Weller Lane to Great Mall Parkway to address the appropriate upgrades and additions required to create a boulevard corridor on Abel.

Staff now recommends that JMH Weiss perform additional traffic consulting services within the project boundary. Services will include a review of existing traffic studies, analysis of Serra Way between Calaveras and Main Street, preparation of a traffic report for South Abel Street, traffic counting services for business along Abel St., and preparation of construction documents to modify the emergency vehicles traffic signal pre-emption and interconnect system at the Calaveras/Abel intersection. Staff has negotiated a fee for these services not to exceed \$54,000.00, which is considered reasonable for the work.

A budget appropriation in the amount of \$100,000 from the Developer contributions is proposed to cover the costs associated with this agreement amendment and anticipated work to include utility planning, public outreach, staff time, and PG&E coordination

RECOMMENDATION:

1. Authorize the City Manager to execute the agreement amendment with JMH Weiss, Inc., in the amount of \$54,000, subject to approval as to form by the City Attorney.
2. Approve budget appropriation in the amount of \$100,000 from the Developer contributions into Project No. 8157.

- *RA9. APPROVE SUBDIVISION IMPROVEMENT AGREEMENT, WITH FINAL MAP, PUBLIC IMPROVEMENT PLANS, ENCROACHMENT PERMIT AGREEMENT WITH WESTERN PACIFIC HOUSING, INC. FOR PARC PLACE CONDOMINIUMS AND BUDGET APPROPRIATION FOR REIMBURSEMENT OF E. CURTIS AVENUE IMPROVEMENTS, E. CURTIS AVENUE, TRACT NO. 9569, DEVELOPMENT PROJECT NO. 3169, CAPITAL IMPROVEMENT PROJECT NO. 8169 (STAFF CONTACT: MEHDI KHAILA, 586-3328)**

BACKGROUND: This 285-unit multi family residential development will be served by public utilities located within the proposed public street and easements. The final map and improvement plans are ready for approval. Copies of the Subdivision Improvement Agreement and excerpts of the final map and improvement plans are included with the Council's agenda packet. A complete set of the final map and improvement plans are available for review in the office of the City Engineer.

The development is undergrounding the existing overhead utilities along its frontage on E. Curtis Avenue. To provide for a consistent design and eliminate the remaining poles between Hammond Way and S. Main Street, the developer has agreed to underground the overhead utilities and construct the necessary sidewalk and street light improvements between Hammond Way and S. Main Street, subject to City reimbursing the developer for their cost. Therefore, the Subdivision Improvement Agreement includes a reimbursement clause for the developer to be responsible for the design and construction of these improvements. The reimbursement will be based on the actual cost and is estimated at \$490,000. The cost of these improvements will be funded by Redevelopment Agency and Capital Improvement Project No. 8168 has been established for this purpose.

An encroachment permit agreement, with the developer also needs to be approved. This document which is a requirement of the approved Special Conditions for the installation and maintenance of landscaping, sidewalk, fences, and appurtenant facilities along the development frontage on E. Curtis Avenue and Hammond Way.

RECOMMENDATION:

1. Approve public improvement plans and final map.
2. Authorize the City Manager to execute the secured Subdivision Improvement Agreement and Encroachment Permit Agreement subject to the approval of the City Attorney as to form.
3. Approve budget appropriation of \$490,000 from Redevelopment Agency Fund to Capital Improvement Project No. 8168.

RA10. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

- 3. PROJECT LIFESAVER PRESENTATION AND CONSIDERATION OF A CONTRIBUTION: MAYOR ESTEVES (STAFF CONTACT: AMERICO SILVI, 586-2810)**

BACKGROUND: Mayor Esteves placed this item on the agenda for a presentation on the Project Lifesaver program and is also asking the Council to consider making a \$500 contribution to the program. Project Lifesaver is a program that equips mentally handicapped persons who have wandering tendencies (i.e. Alzheimer and Autistic victims) with a wrist or ankle "watch like" bracelet. These bracelets have a transmitter that allow the Sheriff's Office to track and find victims within 30 minutes or less by ground or air. There have been over 870 searches conducted using Project Lifesaver and all have resulted with a person being found alive. The Sheriff's

Office provides the equipment at no cost to the participants and charges a \$25.00 fee to recover the cost of monthly battery changes that requires a volunteer to conduct a visit for the change.

RECOMMENDATION: Consider approving a \$500 contribution to Project Lifesaver from the Council's Community Promotions budget.

4. DETERMINE PROCESS FOR MAKING AN APPOINTMENT TO THE PLANNING COMMISSION TO FILL VACANCY DUE TO RESIGNATION OF DEM NITAFAN: MAYOR ESTEVES

BACKGROUND: Mayor Esteves has placed this item on the agenda for Council discussion and direction. On July 20, 2004, Den Nitafan submitted his resignation from the Planning Commission effective July 28, 2004. This vacancy has a term expiring December 2006. In the past, vacancies have been filled by advertising for applications for a 30-day period, Council reviewing the applications and determining applicants to be interviewed, and setting a date for an adjourned Council meeting to interview applicants and to make an appointment.

A copy of the Planning Commission application form and the list of questions previously used are included in the Council's agenda packets. If the Council wishes to make any changes to the list of questions, now would be the appropriate time.

RECOMMENDATION: Determine process for filling Planning Commission vacancy.

*** 5. APPROVE THE MAYOR'S APPOINTMENTS TO THE CITIZENS EMERGENCY PREPAREDNESS ADVISORY COMMISSION, LIBRARY ADVISORY COMMISSION, RECYCLING AND SOURCE REDUCTION ADVISORY COMMISSION, AND THE YOUTH COMMISSION: MAYOR ESTEVES**

BACKGROUND: Mayor Esteves is recommending the following appointments:

Citizens Emergency Preparedness Advisory Commission: Appoint Michael Berryhill to the Alternate No. 1 position (recently vacated by William Dale), for a term expiring June 2006.

Library Advisory Commission: Move Yu-Lan Chou from Alternate 2 to Alternate 1, term expiring June 2006, and appoint Lynne Estandarte to Alternate 2, term expiring June 2006.

Recycling & Source Reduction Advisory Commission: Appoint Steve Ybarra to a business representative vacancy, for a term expiring October 2004.

Youth Advisory Commission: Move Aditya Ullal, Van La, and Charlotte Beard from Alternates to regular members, terms expiring September 2005, and appoint Jay Kunar and Danielle Yee as regular members, terms expiring September 2005.

Included in the Council's agenda packets are copies of current applications for these commissions.

RECOMMENDATION: Approve the Mayor's appointments of Michael Berryhill to the Alternate No. 1 position on CEPAC for a term expiring June 2006; move Yu-Lan Chou from Alternate 2 to Alternate 1, term expiring June 2006, and appoint Lynne Estandarte to Alternate 2 on the Library Commission, term expiring June 2006; appoint Steve Ybarra to RSRAC for a term expiring October 2004; and move Aditya Ullal, Van La, and Charlotte Beard from Alternates to regular members, terms expiring September 2005, and appoint Jay Kunar and Danielle Yee as regular members, terms expiring September 2005, on the Youth Commission.

Economic Development Commission

* **6. APPROVE PRIORITIZATION OF SUBCOMMITTEE PLANS: ECONOMIC DEVELOPMENT COMMISSION: MAYOR ESTEVES (STAFF CONTACT: CINDY MAXWELL, 586-3282)**

BACKGROUND: The City Council created the Economic Development Commission (EDC) in February 2003 to advise on business issues and to design, develop, and implement a comprehensive economic development program for the City of Milpitas. The eleven member Commission held their initial meeting in April 2003. During the past year, the Commission created several subcommittees to study economic issues in depth. Two of the subcommittees, Business Incentives and Nanotechnology and a City Image Subcommittee, produced reports and recommendations that are included as attachments with the Council's mailed agenda packet.

At the June 2003 meeting, the EDC prioritized the recommendations of the two subcommittees for City Council consideration. The EDC recommended the top three priorities as (1) installation of identification signs at major city gateways, (2) development of a nanotechnology incubator project; and (3) development of a city souvenir memento marketing project. The entire prioritized list of recommendations is included with the Council's agenda packet.

The City is in the early phases of preparing an Economic Development Plan. The EDC's recommendations, if approved by the City Council, will be incorporated into the findings and recommendations of the Economic Development Plan.

RECOMMENDATION: Approve the prioritized list of recommendations from the EDC for incorporation into the City's new Economic Development Plan.

XV. UNFINISHED BUSINESS

* **7. ODOR CONTROL COMPREHENSIVE ACTION PLAN UPDATE (STAFF CONTACT: DARRYL WONG, 586-3345)**

BACKGROUND: Staff continues to coordinate with potential odor generating sources and regulatory agencies to implement the odor action plan. Recent key activities include:

1. Completed site visits to Zanker landfill and compost facility, and Cargill to observe odor control best management practices.
2. Met with enforcement agencies (Bay Area Air Quality Management District and the Local Enforcement Agency) to discuss on-going coordination and information sharing status.
3. Participated in a tour of the South Bay Salt Pond Restoration Project and submitted a written request to incorporate odor control provisions into the restoration program.
4. Continued coordination with City odor consultant to develop a contingency planning program.
5. Completed several routine random neighborhood checks for odors.

The Bay Area Air Quality Management District (BAAQMD) has reported the following number of complaints logged in October: 96, November: 50, December: 16, January: 31, February: 11, March: 23, April: 23, May: 13, June: 15, and July (as of July 22): 11.

RECOMMENDATION: Note receipt and file progress report.

* **8. APPROVE CONCEPT FOR INSTALLATION AND MAINTENANCE OF LANDSCAPING FOR I-880/ROUTE 237 INTERCHANGE, (STAFF CONTACT: MIKE MCNEELY, 586-3301)**

BACKGROUND: On November 5, 2002, Council approved in concept an agreement with the California Department of Transportation (Caltrans) for Caltrans to fund approximately \$2.0 million of the cost of landscaping of the I-880/Route 237 Interchange. In exchange, Milpitas would accept maintenance responsibilities for a period of at least 10 years. Subsequently, the

State budget crisis caused Caltrans to postpone the proposal. Staff has continued discussions on funding options and, recently, Caltrans has identified approximately \$2.0 million that may be utilized for installation costs. Meanwhile, the Santa Clara Valley Transportation Authority (VTA) is developing a design utilizing the Measure B funds available for the interchange. Council approval is therefore recommended for staff to develop a detailed proposal and agreement with Caltrans whereby Caltrans provides the \$2.0 million and Milpitas accepts maintenance responsibilities for a specified time period to be negotiated.

It should be recognized that the funding thus far identified will probably not be sufficient to landscape the interchange to the extent previously identified. Staff would continue to pursue additional funding sources. Further, low maintenance concepts will be identified.

RECOMMENDATION: Direct Staff to develop a concept and agreement with Caltrans whereby Caltrans would contribute approximately \$2.0 million for the I-880/Route 237 Interchange landscaping and Milpitas would accept maintenance for a yet to be specified period.

XVI. NEW BUSINESS

*** 9. RECEIVE INFORMATION ON ASSOCIATION OF BAY AREA GOVERNMENTS (ABAG) SEWER DEVICE PROGRAM (STAFF CONTACT: DARRYL WONG, 586-3345)**

BACKGROUND: Sewer backflow devices that protect against backups due to main line blockages are available from ABAG at no cost to homeowners. Either homeowners or plumbers can install the devices without a plumbing permit. Information about the ABAG program is included in the Council's agenda packet. Staff will provide outreach to inform the public about the availability of the ABAG sewer backflow devices.

RECOMMENDATION: Note receipt and file.

*** 10. APPROVE FILLING VACANT POSITIONS: CHIEF BUILDING OFFICIAL, SENIOR BUILDING INSPECTOR, PURCHASING AGENT, AND SECRETARY (STAFF CONTACT: CHERIE ROSENQUIST, 586-3082)**

BACKGROUND: Several vacancies have or will occur in key positions due to retirements—Chief Building Official, Senior Building Inspector, Purchasing Agent, and Secretary.

The Chief Building Official is essential to the Building Division to provide leadership to the sections within the Division--Plan Check Engineering, Building Inspection, and Permit Center.

In addition, the Senior Building Inspector is a lead position in the Building Division and provides daily support and guidance to assigned Inspection staff.

The Purchasing Agent in the Financial Services Department will be retiring soon and the Department is requesting that this position be filled as soon as possible to provide ongoing and seamless purchasing services to the City.

The Planning and Neighborhood Services Department Secretary is a critical position in the department providing direct support to the department head and associated supervisory and professional staff of the Planning, Transportation Planning, Neighborhood Preservation and Housing divisions.

Sufficient funds are included in the fiscal year 2004-05 budget to cover salaries and benefits.

RECOMMENDATION: Approve filling the above vacancies to meet the ongoing service needs of the City.

11. INTRODUCE ORDINANCE NO. 265 ADDING CHAPTER I-40 TO THE CITY OF MILPITAS MUNICIPAL CODE TO ESTABLISH THE ETHICS EVALUATION PANEL (STAFF CONTACT: TAMBRI HEYDEN, 586-3280)

BACKGROUND: On June 1, 2004, the City Council approved the Ethics Code and the Ethics Program Implementation Plan. Implementation measure no. 11 of that Plan is development of an ethics complaint process. Amendment No. 2 to the consulting services agreement with Dr. Shanks, approved on July 6, 2004, provided a scope of work for this task and identified associated deliverables, including an ordinance for Council review on August 3, 2004.

After Dr. Shanks' research of ethics complaint processes in other California cities, the process set forth in the ordinance in the Council's agenda packet is proposed to meet the initial needs of the City. This process was reviewed by the Ethics Steering Committee on July 22, 2004. Concurrent with the ordinance adoption process, a short list of ethics evaluators will be prepared for eventual recommendation of three evaluators that will comprise the panel and a rotating alternate. A contractual agreement with the evaluators is anticipated in September so that the process can be in place by early October.

Briefly, the complaint process is as follows:

1. An Ethics Code complaint against a City Council member, Commissioner and/or Council candidate shall be submitted on the prescribed form to the City Clerk who will forward the complaint to the Lead Evaluator.
2. The Lead Evaluator will review the complaint and determine whether it is acceptable – i.e., specific and within the Panel's jurisdiction, within 72 hours of being received by the City Clerk.
3. If accepted, the Lead Evaluator will call a meeting of the Panel for a date not less than 7 days following the acceptance to allow noticing to the accused, the complainant and all other persons requesting notice.
4. After hearing testimony and reviewing documentary evidence at the meeting, the Panel will make a decision of whether an ethics violation has occurred.
5. After the meeting, the Lead Evaluator will prepare the written decision of the Panel which will be mailed to the complainant and alleged violator.
6. The Panel's written determination, if a violation has occurred, shall require the violator to cease and desist the violation and/or apologize and shall be the basis for public criticism, in addition to possible, recommended further action by the City Council.

Evaluators shall serve four-year terms and shall not live, vote, or have their primary place of business in the City, nor be employed by the City or serve as a City consultant. In addition, evaluators shall not be a candidate for or hold public office in another city or county, shall not have participated in or made financial contributions to a Milpitas election campaign and not be employed as a lobbyist related to City matters. A lead among the evaluators shall be appointed for a one-year term.

In addition to evaluating complaints, the Evaluators shall prepare an annual report to the Community Advisory Commission (CAC) concerning the work of the Panel and any recommended changes to the Ethics Code, Behavioral Standards and complaint procedures.

RECOMMENDATION: The Ethics Steering Committee recommends that the City Council consider Ordinance No. 265 and then:

1. Waive reading beyond the title, and
2. Introduce Ordinance No. 265.

12. ADOPTION OF "OPEN GOVERNMENT" ORDINANCE NO. 262 ESTABLISHING REGULATIONS GOVERNING THE CONDUCT OF ELECTED AND APPOINTED

**OFFICIALS AND REQUIRED DISCLOSURE OF INTERESTS AND CONTACTS
(STAFF CONTACT: STEVE MATTAS, 586-3040)**

BACKGROUND: At the July 6, 2004, City Council meeting, the City Council, by vote of 3-1, introduced Ordinance No. 262. The ordinance is presented now for adoption. The ordinance contains several interrelated provisions which focus on the promotion of transparency and accountability for local elected and appointed officials. It requires City Council members to publicly announce actual or potential financial conflicts of interest with agenda items at the start of City Council meetings, and requires a period of public reflection and recognition regarding the implementation of values contained in the City's Code of Ethics. The ordinance regulates disclosure and public access to financial conflict forms of public officials. It also requires the City Clerk to prepare City Council and Planning Commission attendance and voting records as a public record, and requires city officials to submit updated meeting calendars to the City Clerk. It includes provisions encouraging the use of available technologies to promote citizen access to City resources. Additionally, the ordinance prohibits City Council and Planning Commission members from using their former office to assist applicants through the City process once they have left office, and prohibits membership on certain enumerated volunteer positions while in office. It creates a registration requirement for lobbyists, and disclosure requirements for City Officials who enlist the help of lobbyists and consultants. It includes a retention and access policy for summary closed session minutes. Finally, the ordinance creates distribution requirements for reports and work requests to the City Council.

RECOMMENDATION:

1. Waive full reading of the ordinance; and
2. Adopt Ordinance No. 262.

XVIII. RESOLUTIONS

13. ADOPT RESOLUTION ESTABLISHING A RE-ADJUSTED FEE SCHEDULE FOR BUILDING DIVISION SERVICES (STAFF CONTACT: KEVAN IRANNEJAD, 586-3244)

BACKGROUND: At the July 6, 2004, meeting, the Council reviewed the proposed re-adjusted fee schedule. The Council directed staff to reduce part B, Remodeled/Addition fees for projects between 100 sq. ft. to 300 sq. ft., by 30%.

The re-adjusted fee schedule, included in the Council's agenda packets, has been modified per Council direction (see page 3).

RECOMMENDATION: Adopt resolution approving revised re-adjusted fee schedule for Building Division related services to be effective September 1, 2004.

*** 14. ADOPT RESOLUTION GRANTING PARTIAL INITIAL ACCEPTANCE: GREAT MALL PARKWAY STREET TREES AND MEDIAN MULCH RENOVATION, (PROJECT NO. 4133), (STAFF CONTACT: DOUG DEVRIES, 586-3313)**

BACKGROUND: The City Council awarded the construction and maintenance contract to Watkin & Bortolussi, Inc. on April 20, 2004. This project provided street trees along Great Mall Parkway and Capitol Avenue, and renovation of the existing mulch cover on the median islands, between I-880 to the south City limits. The project has been successfully completed with the exception of the two-year maintenance period. Staff recommends that Council grant a Partial Initial Acceptance and authorize the reduction of the contractor's Faithful Performance bond to 10% of the contract amount plus the amount of Items on the Delayed Item Agreement to a total amount of \$38,100.00. The maintenance portion of the project is being secured by a Delayed Item Agreement, and will be accepted at the end of the two-year maintenance period.

RECOMMENDATION:

1. Adopt resolution granting a Partial Initial Acceptance of the project, except for the Delayed Items, and reduction of the faithful performance bond to \$38,100.00.
2. Approve Delayed Item Agreement and authorize the City Manager to execute the same, subject to approval as to form by the City Attorney.

*** 15. ADOPT RESOLUTION GRANTING INITIAL ACCEPTANCE: SELWYN PARK IMPROVEMENTS, PROJECT NO. 5078, (STAFF CONTACT: DOUG DE VRIES, 586-3313)**

BACKGROUND: On December 16, 2003, City Council awarded the construction project to ESR Construction. This project provided demolition of existing site improvements and construction of a new basketball practice court, pathways, paving, landscaping, irrigation, children's play equipment, rubberized play surfacing, site amenities, drainage improvements, utility work and related improvements. The project has been successfully completed, and staff recommends that Council grant an initial acceptance and authorize the reduction of the contractor's faithful performance bond to 10% of the contract amount or \$17,311.00.

RECOMMENDATION: Adopt resolution granting initial acceptance of the project subject to a one-year warranty period and reduction of the faithful performance bond to \$17,311.00.

*** 16. ADOPT RESOLUTION GRANTING PARTIAL INITIAL ACCEPTANCE: PIEDMONT / 237, TRACT 9148, (PROJECT NO. 3064) (STAFF CONTACT: MEHDI KHAILA, 586-3328)**

BACKGROUND: The public improvements consist of roadway, utilities, and creek improvements have been partially completed by the developer. The remaining unfinished work consists of monitoring and maintenance of a mitigation area as required by the Department of Fish and Game as part of the project improvement within the Los Coches Creek. The mitigation site is to be monitored for a minimum of 11 years and until plants are established. Staff is in contact with the developer (Piedmont LLC) to have the remaining work completed and recommends that the City Council accept those completed improvements for ownership and maintenance without reducing the project surety bonds

RECOMMENDATION: Adopt a resolution granting partial initial acceptance without reducing project surety bonds.

*** 17. ADOPT RESOLUTION OF LOCAL SUPPORT AND APPROVE BUDGET APPROPRIATION: SOUTH PARK VICTORIA DRIVE PAVEMENT REHABILITATION, PHASE 1, PROJECT NO. 4225, (STAFF CONTACT: DOUG DEVRIES, 586-3313)**

BACKGROUND: Staff is working to secure Federal Surface Transportation Program (STP) Funding to improve South Park Victoria Drive between Calaveras Boulevard and Yosemite Drive. This project will provide resurfacing for this section of South Park Victoria Drive. The amounts of available STP Funding are \$249,000 for fiscal year 2005/2006 (Phase 1) and another \$249,000 for fiscal year 2006/2007 (Phase 2). To implement this project, it is necessary to adopt Resolution of Local Support authorizing the filing of an application for Federal Surface Transportation Program Funding for S. Park Victoria Drive Pavement Rehabilitation Phases 1 & Phase 2 and committing the necessary local match for the project and stating the assurance of City of Milpitas to complete the project.

An appropriation of \$281,000 as local match fund will be needed to fund the design and construction of the fiscal year 2005/2006 project. Funds are available from the Street Fund.

RECOMMENDATION:

1. Approve the budget appropriation of \$281,000 for South Park Victoria Drive Pavement Rehabilitation, Phase 1, Project No 4225.

XIX. BIDS AND CONTRACTS

- * **18. AUTHORIZE THE CITY MANAGER TO EXECUTE MEMORANDUM OF UNDERSTANDING WITH UNION PACIFIC RAILROAD AND SANTA CLARA COUNTY FOR THE REPAIR OF THE RAILROAD CROSSING AT MONTAGUE EXPRESSWAY, MONTAGUE WIDENING (PROJECT NO. 4179) (STAFF CONTACT: MIKE MCNEELY, 586-3301)**

BACKGROUND: The Montague Widening project is included in the current five-year Capital Improvement Program (CIP). The completed project will provide two additional lanes (one eastbound and one westbound) between I-680 and Center Pointe Drive. This improvement will cause the relocation and replacement of existing railroad signals. The construction of this project is currently planned for late 2005. However, the current condition of the UPRR crossing at Montague Expressway is rapidly deteriorating and needs immediate repair. Staff has met with the County of Santa Clara and UPRR to discuss available options to provide interim repairs of the Montague crossing in advance of the City's widening project. UPRR has agreed to perform the repairs this summer, to assist with traffic control and permits, and to also allow removal of three other existing crossings, two on Yosemite Dr. and one on Wrigley Way. The County will prepare traffic control plans.

Staff has negotiated a Memorandum of Understanding with Santa Clara County and UPRR to perform the interim repair. UPRR would furnish all of the materials and labor and the City would be responsible for the costs associated with providing traffic control and the additional costs to provide maintain the asphalt batch plant in operation after normal working hours, in order to perform this work during the nighttime. The City's proposed cost share shall not exceed amount of \$50,000, which is considered reasonable for the work. There are sufficient funds in the project budget to cover this additional expense.

RECOMMENDATION: Authorize the City Manager to execute Memorandum of Understanding with Union Pacific Railroad and Santa Clara County in the not to exceed amount of \$50,000.00, subject to approval as to form by the City Attorney.

- * **19. APPROVE JOINT USE AGREEMENT WITH PG&E FOR EASEMENTS: DIXON/I-880 INTERCHANGE PROJECT (PROJECT NO. 4047) (STAFF CONTACT: MIKE MCNEELY, 586- 3301)**

BACKGROUND: On May 16, 2000, City Council approved a Resolution of Necessity, No. 6995, to acquire the necessary right of way and accommodate various utility relocations for the Dixon Landing/I-880 Interchange project. A small triangular parcel of land, approximately 200 square feet in area and within the franchise area of the original roadway for Dixon Landing Road, was not included in this document. This piece is necessary to complete and reestablish the original 50' wide easement for the two PG&E gas transmission pipelines that were relocated as part of the interchange project. A Joint Use Agreement with PG&E has been prepared. No additional funds are required for this agreement.

RECOMMENDATION: Authorize the City Manager to enter into the Joint Use Agreement for PG&E easements, at no further cost to the City, subject to approval as to form by the City Attorney.

- * **20. APPROVE AGREEMENT FOR PURCHASE OF REAL PROPERTY, N&M PLAZA, LLC; ABEL CALAVERAS RIGHT TURN LANE PROJECT, (PROJECT NO. 4186) (STAFF CONTACT: G. ARMENDARIZ, 586-3401)**

BACKGROUND: This project is included in the approved Capital Improvement Program (CIP), and provides a dedicated right turn lane from northbound Abel Street to eastbound Calaveras Blvd.

The project requires a total of a real property acquisition of a 1,246 square foot parcel owned by N&M Plaza, LLC located on the east side of Abel Street just north of Serra Way. An appraisal and negotiated purchase agreement have been completed for the purchase of the property. The total negotiated price for the parcel including escrow closing costs and related fees is \$66,000.00. Sufficient funds are available in the project budget for this purchase.

RECOMMENDATION: Approve Agreement for Purchase of Real Property in the amount of \$66,000 from N&M Plaza, LLC.

- * **21. AUTHORIZE THE CITY MANAGER TO EXECUTE AGREEMENT WITH DAMON S. WILLIAMS ASSOCIATES, WATER SYSTEM SEISMIC IMPROVEMENTS, PROJECT NO. 7100, (STAFF CONTACT: DOUG DE VRIES, 586-3313)**

BACKGROUND: This project is included in the current five-year Capital Improvement Program (CIP). The project will develop a strategic plan for water system seismic improvements, which will balance the need for new capital improvements and the enhancement of emergency response capability in order to improve reliability during and after seismic events from faults in the vicinity of the City. The consultant will review and make specific recommendations for selection of appropriate improvements, types of flexible joints at fault crossings, locations and type of rigid pipe replacements, types of materials and joints for a backbone system and review of City Documents for adequacy during a seismic event.

Staff has interviewed several professional consultants in conformance with the City's consultant selection process, and recommends that Damon S. Williams Associates provide the required consulting services required to design the improvements for this project. Staff has negotiated a scope and fee for these services not to exceed \$49,805.34, which is considered reasonable for the work. There are sufficient funds in the project budget to cover this additional expense.

RECOMMENDATION: Authorize the City Manager to execute the agreement with Damon S. Williams Associates, in the amount of \$49,805.34, subject to approval as to form by the City Attorney.

- * **22. APPROVE CONTRACT AMENDMENT WITH VALLEY OIL COMPANY FOR FUEL PURCHASES (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: Valley Oil Company was awarded a one-year contract on October 2, 2002 with options to extend for three one-year periods based on performance to provide gasoline and diesel fuel to the City. Services from Valley Oil have been very good and staff is requesting to extend their contract for an additional year. Staff estimates that the compensation amount will increase from \$277,300 to \$280,000 due to market increase for fuel prices. There are sufficient funds in the Public Works Department budget for fuel purchases.

RECOMMENDATION: Approve the amendment to the contract with Valley Oil Company subject to approval as to form by the City Attorney, and authorize the annual expenditure in the amount not to exceed \$280,000.

- * **23. APPROVE RENEWAL OF ANNUAL SOFTWARE SUPPORT AND MAINTENANCE FEES WITH ACTUATE CORPORATION FOR THE REPORTING SYSTEM USED BY THE FINANCE SYSTEM THROUGH JUNE 30, 2005 (STAFF CONTACT: TERRY MEDINA, 586-2703)**

BACKGROUND: In fiscal year 1997/98, the City of Milpitas implemented a new Finance system that supported the financial tracking and reporting needs of the City. The system includes

licensed software and maintenance support provided by Cayenta, the vendor of the financial application. Additional reporting capabilities are provided through the Actuate Corporation software. Maintenance and support of the reporting system are provided through the renewal of the annual fee.

The annual software support and maintenance fee also entitles the City to any system enhancements that Actuate develops during the year at no charge to the City. The annual maintenance term with Actuate expired on October 29, 2003, and requires renewal to ensure continuation of the software license and software support of the Financial Reporting System. Funding for the agreement has already been approved in the Information Services operational budget. No additional funding is required for this agreement.

Approval of the annual software support and maintenance fee with Actuate Corporation will provide continued support of the Financial Reporting System through June 30, 2005.

RECOMMENDATION: Authorize the City Manager to approve the payment of the annual software support and maintenance fee to Actuate Corporation in an amount not to exceed \$12,500.00.

*** 24. APPROVE RENEWAL OF ANNUAL SOFTWARE SUPPORT AND MAINTENANCE FEES WITH CAYENTA FOR THE FINANCIAL SYSTEM THROUGH JUNE 30, 2005 (STAFF CONTACT: TERRY MEDINA, 586-2703)**

BACKGROUND: In fiscal year 1997/98, the City of Milpitas implemented a new Finance system that supported the financial tracking and reporting needs of the City. The system includes licensed software and maintenance support provided by Cayenta, the vendor of the financial application. Maintenance and support of the system are provided through the renewal of the annual fee.

The annual software support and maintenance fee also entitles the City to any system enhancements that Cayenta develops during the year at no charge to the City. The annual maintenance term with Cayenta expired on June 30, 2004, and requires renewal to ensure continuation of the software license and software support of the Finance System. Funding for the agreement has already been approved in the Information Services operational budget. No additional funding is required for this agreement.

Approval of the annual software support and maintenance fee with Cayenta will provide continued support of the Finance System through June 30, 2005.

RECOMMENDATION: Authorize the City Manager to approve the payment of the annual software support and maintenance fee to Cayenta in an amount not to exceed \$65,000.00.

*** 25. AUTHORIZE PURCHASE OF EQUIPMENT FOR THE CONSTRUCTION PROJECTS TEAM (PROJECT NO. 8134), (STAFF CONTACT: TERRY MEDINA, 586-2703)**

BACKGROUND: With the expansion of the City's Redevelopment Area and the initiation of over seventeen construction projects in the Midtown Area alone there was an immediate need to increase the number of staff on the Construction Projects Team. With the increase in the number of team members came the need to provide additional equipment. In order to support the technology needs of the members it is necessary to purchase two laptops and one network printer.

After receiving the request for the new equipment from the Construction Projects Team, Information Services staff contacted numerous hardware vendors in search of the most competitively priced equipment. The end result of that effort is to recommend the purchase of two IBM Thinkpad laptops and one HP 5500n network ready printer from Surah Inc. in an amount not to exceed \$10,500.

Funds are available from the Senior Center Renovation project (Project 8134) budget for this purchase.

RECOMMENDATION: Approve the purchase of two IBM Thinkpad laptops and one HP 5500n network ready printer from Surah, Inc. in an amount not to exceed \$10,500.

* **26. APPROVE RENEWAL OF ANNUAL SOFTWARE SUPPORT AND MAINTENANCE FEES WITH AMERICAN MANAGEMENT SYSTEMS, INC. FOR THE BUDGET SYSTEM THROUGH JUNE 30, 2005 (STAFF CONTACT: TERRY MEDINA, 586-2703)**

BACKGROUND: In fiscal year 1997/98, the City of Milpitas implemented a new Budget system that supported the budget tracking and reporting needs of the City. The system includes licensed software and maintenance support provided by American Management Systems, Inc. (AMS), the vendor of the budget application. Maintenance and support of the system are provided through the renewal of the annual fee.

The annual software support and maintenance fee also entitles the City to any system enhancements that AMS develops during the year at no charge to the City. The annual maintenance term with AMS expired on June 30, 2004 and requires renewal to ensure continuation of the software license and software support of the Budget System. Funding for the agreement has already been approved in the Information Services operational budget. No additional funding is required for this agreement.

Approval of the annual software support and maintenance fee with AMS will provide continued support of the Budget System through June 30, 2005.

RECOMMENDATION: Authorize the City Manager to approve the payment of the annual software support and maintenance fee to American Management Systems in the amount not to exceed \$5,900.00.

* **27. AWARD BID FOR EPOXY FLOOR COATING APPLICATION FOR FLEET MAINTENANCE GARAGE, PROJECT NO. 8150, (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: Staff issued an Invitation for Bids (IFB) to resurface the existing Fleet Maintenance Garage floor with a new epoxy coating. A bidders' conference was conducted to familiarize the contractors with the work that was required. Four contractors attended the conference and three responded with proposals. Staff inspected prior work of all of the contractors to determine work quality. All work was found to be well above average. Following is a recap of the three bids received:

<u>CONTRACTOR</u>	<u>AMOUNT</u>
Tera-Lite, Inc.	\$ 26,185.00
Stonehard Maple	\$ 34,132.35
C & L Coating	\$ 47,250.00

Staff recommends awarding the bid to Tera-Lite, Inc. as the low responsive and responsible bidder meeting all requirements of the bid. Sufficient funds are available in the project budget for this work.

RECOMMENDATION: Authorize the City Manager to execute a contract with Tera Lite, Inc., for an amount not to exceed \$26,185.00, subject to approval as to form by the City Attorney.

* **28. APPROVE INSTALLATION OF EMERGENCY POWER GENERATOR AT MISSION RIDGE RADIO SITE BY MISSION CITY CONTRACTORS (STAFF CONTACT: DAVID ROSSETTO, 586-2405)**

BACKGROUND: The City's primary radio repeater site for public safety communication is located atop Mission Ridge (Frazier Peak), a remote site above Ed Levin County Park. Mission City Contractors has maintained the power generation system at the site for many years, they've relocated and re-plumbed the 250 gallon propane tank, installed the electrical transfer switch, manufactured a weather enclosure to protect the existing generator and performed many emergency repairs. They have vehicles that will access the site and lift heavy equipment. The existing power generator has aged to the point where it is unreliable. A new one was purchased and delivered to the warehouse in July. Installation of the new generator will require expansion of the existing concrete pad, construction of a pressure treated wood wind block around the new generator, installing a new propane connection, and connecting the electrical transfer switch into the building's electrical panel. Mission City Contractors holds the appropriate contractors' licenses for the above work and their quote is \$13,170, which is reasonable because of the difficult access with proper equipment to the site. Because of the contractor's capabilities, knowledge of the site, the building's content and existing wiring, we request this work be awarded to Mission City Contractors to expedite the installation of the emergency generator.

RECOMMENDATION: Approve the installation of a new emergency power generator at Mission Ridge by Mission City Contractors in an amount not to exceed \$13,170.

XX. CLAIMS AND DEMANDS

*** 29. AUTHORIZE PURCHASE ORDERS TO MEYERS NAVE FOR LEGAL SERVICES (STAFF CONTACT: STEVE MATTAS, 586-3040)**

BACKGROUND: As part of the approved budget for fiscal year 2004-2005, the City Council authorized a total of \$670,000 for general city attorney services and for labor negotiations for one bargaining unit and for personnel arbitration, grievance and PERB proceedings. In addition the approved budget included contingent reserve funds for litigation actions on behalf of the City. The purpose of this staff report is to request that the City Council authorize purchase orders to Meyers Nave for the legal services referenced above. Specifically, the requested purchase orders include: (1) a purchase order in the amount of \$563,000 for general city attorney and personnel legal services for fiscal year 2004-2005 funded from the previously approved City Attorney supplies/services budget; (2) a purchase order in the amount of \$105,000 for labor negotiations for one bargaining unit and for labor arbitration/grievance/PERB proceedings for fiscal year 2004-2005 funded from the City Attorney supplies/services budget; (3) a purchase order in the amount \$350,000 for public works construction litigation expenses funded from the previously approved contingent reserve account.

RECOMMENDATION: It is recommended that the City Council authorize issuance of purchase orders to Meyers Nave in the amounts of (1) \$563,000 for general personnel and legal services for fiscal year 2004-2005, (2) \$105,000 for labor negotiations for one bargaining unit and personnel arbitration, grievance and PERB proceedings, and (3) \$350,000 for public works construction litigation expenses.

*** 30. APPROVE CONTRACT CHANGE ORDER TO MCGUIRE HESTER: SOUTH BAY WATER RECYCLE, PROJECT NO. 6093, M-4 (STAFF CONTACT: MIKE MCNEELY, 586-3301)**

BACKGROUND: This project constructed 18,000 linear feet of new 6", 16", and 20" recycled water transmission pipeline as part of the South Bay Water Recycling Program (SBWRP) to serve landscape irrigation customers including schools, and parks. The construction contract was awarded to McGuire & Hester, in the amount of \$3,408,350 on July 3, 2001. The project was initially accepted on December 2, 2003.

Upon completion of the project, the contractor filed a claim against the City, in the amount of \$228,591.42 requesting additional compensation for damages incurred to investigate and repair joints within the ductile iron pipe installed by the contractor. On June 29, 2004, mediation

between the parties was conducted as is required in the process of resolving Government Code claims. The parties involved reached a final settlement in the amount of \$80,000. The Consultant (Black & Veatch) will pay \$60,000 to the Contractor (McGuire & Hester) while the City will pay \$20,000. Staff recommends the approval of payment in the amount of \$20,000 to McGuire & Hester. Adequate funds are available in the project budget.

RECOMMENDATION: Approve Contract Change Order to McGuire Hester in the amount of \$20,000.

*** 31. APPROVE PAYMENT REQUESTS: MISCELLANEOUS VENDORS/CONTRACTORS
(STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$7,999.36 to DARE America Merchandise for proprietary t-shirts, supplies and awards for the DARE program for the Police Department. (Funds are available from the Police Department operating budget for this purchase.)
2. \$9,500.00 to Konica Minolta Business Machines for annual maintenance and support for three shared high speed copiers at City Hall for the Purchasing Division. (Funds are available from the Non-Departmental operating budget for this service.)
3. \$6,090.00 to Peelle Technologies for purchasing of a document imaging scanner, software licensing agreements and annual maintenance to be used by the CIP Project Team to electronically image project documents. (Funds are available from the Senior Center Renovation project (Proj. 8134) budget for this purchase.)
4. \$24,000.00 to the Milpitas Unified School District for the City's share of secretarial services for the Youth Services Bureau for the Police Department. (Funds are available in the Police Department operating budget for this service.)
5. \$19,500.00 to Economic Driving School for seven driver education classes offered by the Recreation Division. Fees are collected from the participants to offset the cost of the classes. (Funds are available in the Recreation Division operating budget for these services.)
6. \$17,000.00 to Mad Science of the Bay Area for quarterly classes offered by the Recreation Division. Fees are collected from the participants to offset the cost of the classes. (Funds are available in the Recreation Division operating budget for these services.)
7. \$20,000.00 to City of Fremont – Tennis Center for providing tennis instructors for classes offered by the Recreation Division throughout the year per a JPA agreement with the City of Fremont. Fees are collected from the participants to offset the cost of the classes. (Funds are available in the Recreation Division operating budget for these services.)

RECOMMENDATION: Approve the purchase requests.

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, AUGUST 17, 2004, AT 7:00 P.M.**

City Council

Jose Esteves, Mayor

Patricia Dixon, Vice Mayor

Bob Livengood, Councilmember

Althea Polanski, Councilmember

Armando Gomez, Councilmember



MILPITAS CITY COUNCIL

NOTICE OF SPECIAL MEETING

July 29, 2004

6:30 p.m.

Council Chambers, City Hall

455 E. Calaveras Blvd

NOTICE IS HEREBY GIVEN that, pursuant to Government Code section 54956, the Mayor and City Council have called a Special Meeting of the Milpitas City Council to be held at 6:30 p.m. on Thursday, the 29th day of July, 2004, in the Council Chambers, 455 E. Calaveras Blvd, Milpitas, California. The purposes of the meeting are as follows:

- (1) To consider placing a ballot measure before the voters to adopt an ordinance requiring that, until December 31, 2018, any amendments to the current Hillside Ordinance would require the approval of the voters and reaffirm direction to the City Attorney to prepare impartial analysis; and**
- (2) To participate in a training workshop on the newly adopted Milpitas Code of Ethics.**

Gail Blalock, City Clerk
408/586-3001

Dated: July 22, 2004

City of Milpitas, 455 E. Calaveras Blvd, Milpitas, CA 95035, Phone: 408/586-3000
Individuals requiring accommodations for this meeting should notify the City Clerk 48 hours prior to the meeting
408/586-3001, TDD 408/586-3013.
Hearing assistance devices are available for use in the Council Chambers

City Council

Jose Esteves, Mayor

Patricia Dixon, Vice Mayor

Bob Livengood, Councilmember

Althea Polanski, Councilmember

Armando Gomez, Councilmember



AGENDA

SPECIAL CITY COUNCIL MEETING

July 29, 2004
6:30 p.m.

Council Chambers, City Hall
455 E. Calaveras Blvd

I. ROLL CALL & PLEDGE OF ALLEGIANCE

II. CITIZENS FORUM

Please limit remarks to two minutes.

III. APPROVAL OF AGENDA

IV. CONSIDER ADOPTING A RESOLUTION PLACING AN INITIATIVE MEASURE ON THE NOVEMBER 2, 2004, BALLOT TO REQUIRE, THROUGH DECEMBER 31, 2018, VOTER APPROVAL OF ANY MODIFICATIONS TO THE EXISTING HILLSIDE LAND USE REGULATIONS ORDINANCE (ORDINANCE NO. 38.672) AND REAFFIRM DIRECTION TO CITY ATTORNEY TO PREPARE IMPARTIAL ANALYSIS

BACKGROUND: The City Attorney Subcommittee requested that the City Attorney's office prepare a ballot measure that would institute a requirement that any modification to the Hillside Ordinance (Ordinance No. 38.672 - adopted by the City Council on September 15, 1992) be approved by the voters at an election prior to taking effect. If approved by the voters, the newly-

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*Individuals requiring accommodations for this meeting should notify the City Clerk 48 hours prior to the meeting
408/586-3001, TDD 408/586-3013.*

Hearing assistance devices are available for use in the Council Chambers

after the certification of the election results and would remain in effect through December 31, 2018. The termination date for the voter approval requirement for any modifications to the Hillside Ordinance would coincide with the termination date for the Urban Growth Boundary previously approved by the voters of Milpitas.

In the event the initiative measure is placed on the ballot and approved at the election, the voter approval requirement will remain in effect until December 31, 2018. Upon expiration of the proposed initiative measure, the Hillside Ordinance would remain in effect, but could once again be modified by action of the City Council without first seeking voter approval of the change.

This matter was on the City Council's July 6, 2004, agenda, and the Council directed that in order to receive additional public input, the item be scheduled for further consideration at a special City Council meeting on July 29, 2004. The City Council also directed that that additional public notice of the meeting be provided through published notice in the Milpitas Post. Notice of the meeting was published twice in the Milpitas Post.

Since the July 6, 2004, meeting, staff has reviewed the proposed ballot measure and revised it to implement the goal of requiring voter approval prior TO any amendment of land use regulations related to hillside property. The revised ordinance now provides that the lands designated as in the City's General Plan on the date of the election as "Hillside Very Low," "Hillside Low," and "Hillside Medium" may not be amended to another land use designation other than a hillside designation without voter approval. The effect of this change would be to require voter approval of any revisions to the boundary of the lands subject to the Hillside Ordinance. As the intent of the ballot measure is to require voter approval for any changes related to the Hillside Ordinance, staff thought upon further review that the proposed change was appropriate to reconcile the proposed ballot measure with the General Plan. This additional language does not modify any existing land use designation for property within the hillside areas of the City. Similarly, the proposed initiative measure does not modify any current provision of the Hillside Ordinance. Thus, the same land use regulations that presently apply to property within the current Hillside Combining District would continue to apply.

As the proposed initiative measure does not modify any existing land use regulations or modify the lands subject to the existing land use regulations, the City Council's action to approve the resolution placing the initiative measure on the ballot is exempt from CEQA pursuant to CEQA Guideline Regulations 15061(b)(3), 15307 and 15308. Guidelines Section 15061(b)(3) provides, in relevant part, that "CEQA applies only to projects, which have the potential for causing a significant effect on the environment." As the initiative measure does not modify any existing land use regulations related to development within the Hillside Combining District or modify the lands subject to the existing land use regulations, the measure does not have potential for causing any significant effect on the environment. Guidelines sections 15307 and 15308 exempt from CEQA actions taken by regulatory agencies that involve procedures for the protection of the

natural resources and the environment respectively. The addition of a requirement for voter approval prior to any modifications of the existing Hillside Ordinance or any modifications of the lands subject to the existing Hillside Ordinance, which itself identifies as part of its purposes the avoidance of ecological/environmental disasters and the need to address environmental concerns as part of development application, provides additional procedures for protecting the natural resources and environment of Milpitas hillside property.

In the event the City Council decides to place the initiative measure on the November 2, 2004, ballot, the resolution placing the measure on the ballot would reaffirm the prior direction for the City Attorney to prepare an impartial analysis and would, in accordance with the Council's motion at the July 6, 2004, meeting, authorize Vice Mayor Dixon and Council Member Polanski to prepare and submit a ballot argument in favor of the initiative measure and to prepare and submit a rebuttal argument in the event an argument is filed against the ballot measure. A draft of the City Attorney's impartial analysis is attached for the Council's information.

RECOMMENDATION: Vice-Mayor Dixon and Council Member Polanski recommend that the City Council approve the resolution placing the initiative measure instituting a voter approval requirement for any amendments to the existing Hillside Ordinance (Ordinance No. 38.672) on the November 2, 2004, ballot. In the event the City Council elects to place the measure on the ballot, staff recommends that the City Council direct the City Attorney to prepare the impartial analysis.

RECESS

V. MILPITAS ETHICS PROGRAM: FOSTERING PUBLIC TRUST

The City Council will participate in a Workshop on Role Modeling, Ethical Leadership, and The Code of Ethics led by Dr. Thomas Shanks, Associate Professor of Communication, Santa Clara University.

VI. ADJOURNMENT

CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
July 6, 2004
7:00 p.m. Public Business
455 E. Calaveras Boulevard

- I. ROLL CALL (7:00 p.m.)**
- II. ADJOURN TO CLOSED SESSION (NONE)**
- III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present**
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. APPROVAL OF MINUTES: June 10, 2004, June 15, 2004, and June 16, 2004**
- VI. SCHEDULE OF MEETINGS**
- VII. PRESENTATIONS**

Certificates of Reappointment:

- Diane Davis, Library Advisory Commission
- Marilyn Hay, Library Advisory Commission
- Margie Stephens, Library Advisory Commission
- Trinidad Aoalin, Library Advisory Commission

Proclamations:

- Milpitas and Tsukuba Sister City Relationship, January 30, 2004 – December 31, 2008
- Parks and Recreation Month
- Neil MacKenzie Community Service Day
In recognition of Mr. MacKenzie's contributions to the community

Comments:

- Santa Clara Valley Water District Activities by Director Richard Santos

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

- IX. ANNOUNCEMENTS**
- X. APPROVAL OF AGENDA**
- XI. CONSENT CALENDAR (Items with Asterisks)**
- XII. PUBLIC HEARINGS**

1. **Approve Entertainment Event Permit and Waive Fees: Art & Wine Summer Festival: August 21-22, 2004: Milpitas Chamber Of Commerce (Staff Contact: Gail Blalock, 586-3001)**
2. **Adopt Resolution Establishing a Re-Adjusted Fee Schedule for Building Division Services (Staff Contact: Edgar Rodriguez, 586-3248)**
3. **Adopt Resolution Approving Revised Facility Use Rules and Regulations and Rental Fee Structure for City Hall Facilities (Staff Contacts: Bonnie Greiner, 586-3227 & Gail Blalock, 586-3001)**
4. **Continue the Request for Approval of An Amended Density Bonus, "S" Zone Approval Amendment No. SA2004-7, Use Permit Amendment No. UA2004-2, Land Exchange Agreement and Reimbursement Agreement for the N. Main Street Storm Drain for Apton Plaza – 230 North Main Street (Staff Contact: Staci Pereira, 586-3278)**
5. **Adoption of Analysis of Impediments (AI) to Fair Housing Choice Report (Staff Contact: Felix Reliford, 586-3071)**

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: June 16, 2004

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

***RA5. Authorize Issuance Of Purchase Order: Constructware Solutions Group, Library Project (Project No. 8162) (Staff Contact: Mark Rogge, 586-3403)**

***RA6. Award Upgrade of Fire Alarm Panel; Civic Center (Project No. 8026) (Staff Contact: Greg Armendariz, 586-3402)**

RA7. Authorize Staff to Negotiate an Architectural and Engineering Consultant Services Contract with Group 4 Architecture, Research & Planning, Inc., for Library Design, (Project No. 8162) (Staff Contact: Mark Rogge, 586-3403)

***RA8. Award Construction Contract: Interim Senior Center Interior & Kitchen Improvements (Project No. 8151) Ranis Construction & Electric, Inc. (Staff Contact: Mark Rogge, 586-3257)**

RA9. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

- * 6. Approve the Mayor's Appointments to the Parks, Recreation, and Cultural Resources Commission and Senior Advisory Commission: Mayor Esteves**
- 7. Discussion and Conceptual Approval of Providing Maintenance Costs for Community College Classes at Milpitas High School: Mayor Jose Esteves and Vice Mayor Patricia Dixon**

8. **Approval of A Resolution Supporting Extending the Statutory Authorization for the Safe Routes to School Program: Vice Mayor Patricia Dixon**

Transportation Subcommittee

9. **Approve release of RFQ/RFP for BART Station Transit Area Plan (Staff contact: Joe Oliva, 586-3290)**
- * 10. **Approve Request to Submit a Grant Application to the Metropolitan Transportation Commission for the 2004/2005 Transportation for Livable Communities (TLC) Grant (Staff Contact: Janice Nadal, 586-3291)**
- * 11. **Approve Priorities for Year 2000 Measure A Transit Program (Staff Contact: Joe Oliva, 586-3290)**

XV. UNFINISHED BUSINESS

12. **Approval of Resolutions Transmitting Two Initiative Measures [One an Initiative Extending the Term of the Elective Mayor from Two to Four Years and the Second Amending the Existing Term Limits Ordinance to Provide that a Person May Serve a Maximum of Three Consecutive Elective Terms as a City Councilmember or Two Consecutive Four Year Terms as the Mayor Subject to an Overall Limitation of Four Consecutive Terms] to the County Registrar's Office for Placement on the November 2004 General Election Ballot; Direction to City Attorney to Prepare Impartial Analysis and Selection of City Council Representatives to Prepare Ballot Arguments and Rebuttals (Staff Contact: Steve Mattas, 586-3040)**
- * 13. **Solid Waste Service Franchise Extension: Potential Level of Service Upgrades (Staff Contact: Darryl Wong 586-3345)**

XVI. NEW BUSINESS

14. **Consideration of Resolution Placing an Initiative Measure on the November 2, 2004, Ballot to Require, through December 31, 2018, Voter Approval of Any Modifications to the Existing Hillside Land Use Regulations Ordinance (Milpitas Ordinance No. 38.672); Potential Direction to City Attorney to Prepare Impartial Analysis and Selection of City Council Representatives to Prepare Ballot Argument in Favor of Proposed Initiative Measure and Rebuttal Argument as Necessary (Staff Contact: Steve Mattas, 586-3040)**
15. **Provide Staff Direction on Cost Recovery for Review of Planning Applications and Other Services (Staff Contact: James Lindsay, 586-3274)**
- * 16. **Approve Filling Vacant Position: Building Inspector (Staff Contact: Edgar Rodriguez, 586-3248)**
- * 17. **Approve Co-Sponsorship with the Milpitas Chamber of Commerce of a Candidates' Forum (Staff Contacts: Thomas Wilson & Gail Blalock, 586-3001)**
- * 18. **Approve Fee Waiver for Rental of City-Owned Portable Stage: South Bay Kids (Staff Contact: Bonnie Greiner, 586-3227)**
- * 19. **Approve Appropriation of \$540.00 Grant Awarded to Recreation Services by the Northern California Grantmakers. (Staff Contact: Aaron Bueno 586-3226)**
- * 20. **Approve Appropriation of \$760.00 Grant Awarded to Recreation Services by the Northern California Grantmakers (Staff Contact: Dale Flunoy, 586-3228)**

XVII. ORDINANCES

- 21. Consideration of “Open Government” Ordinance Establishing Regulations Governing the Conduct of Elected and Appointed Officials and Required Disclosure of Interests and Contacts (Staff Contact: Steve Mattas, 586-3040)**

XVIII. RESOLUTIONS

- 22. Adopt a Resolution of Necessity Regarding Acquisition of Property for the Abel/Calaveras Right Turn Lane (Project No. 4186) (Staff Contact: Mike McNeely, 586-3301/Greg Armendariz, 586-3401)**
- * 23. Adopt Resolution Approving Lot Line Adjustment: Kathleen A. and Barton P. Simmons, 260 and 270 South Main Street (Staff Contact: Mehdi Khaila, 586-3328)**
- * 24. Adopt Resolution Granting Initial Acceptance: Calaveras Blvd./Piedmont Road-Evans Road Intersection Improvements (Project No. 4208) (Staff Contact: Mike McNeely, 586-3301)**
- * 25. Adopt Resolution Granting Initial Acceptance: Modular Furniture for City Hall (Project No. 8026) (Staff Contact: Greg Armendariz, 586-3401)**
- * 26. Adopt Resolution Granting Final Acceptance: 2001 Street Resurfacing (Project No. 4182) (Staff Contact: Mike McNeely, 586-3301)**
- * 27. Adopt Resolution Granting Final Acceptance: McCandless Box Culvert Repair (Project No. 4182a) (Staff Contact: Doug De Vries, 586-3313)**
- * 28. Adopt Resolution Granting Final Acceptance and Release of Bonds: Civic Center (Project No. 8026) (Staff Contact: Greg Armendariz, 586-3220)**
- * 29. Adopt Resolution Setting August 5, 2004, as Milpitas National Night Out 2004 (Staff Contact: Gail Blalock, 586-3001)**

XIX. BIDS AND CONTRACTS

- * 30. Approve Budget Appropriation: Piedmont Road Bike Lane and Sidewalk Improvements at St. John’s Cemetery (Project No. 4214) (Staff Contact: Greg Armendariz, 586-3401)**
- * 31. Approve Plans and Specifications: Water System Air Relief Valve Modifications - Phase I (Project No. 7086) (Staff Contact: Doug DeVries, 586-3313)**
- * 32. Approve Plans and Specifications, and Authorize Advertisement for Bid Proposals: Main Sewage Pump Station Site Improvements (Project No. 6079), West Yost & Associates (Staff Contact: Mark Rogge, 586-3403)**
- * 33. Approve Provision of Additional Services to the Central Contra Costa Sanitary District (Staff Contact: Bill Marion, 586-2701)**
- * 34. Authorize the City Manager to Execute the Cost Sharing Agreement: Valley Transportation Authority (VTA), 237/I-880 Interchange Project (Project No. 4170) (Staff Contact: Mike McNeely, 586-3301)**
- * 35. Approve Agreement Amendment: Olivia Chen Consultants, Oakcreek Pump Station (Project No. 8140) (Staff Contact: Greg Armendariz, 586-3401)**

- * 36. **Approve Agreement Amendment: Camp Dresser & Mckee for Professional Engineering Services Supporting the Solid Waste Program (Staff Contact: Darryl Wong, 586-3345)**
- * 37. **Authorize City Manager to Execute Agreement Amendment: JMH Weiss, Inc., Senior Housing Project (Project No. 8103) (Staff Contact: Mark Rogge, 586-3403)**
- * 38. **Award Construction Contract: Pavement Improvement Program (Project No. 4182) (Staff Contact: Greg Armendariz, 586-3401)**
- * 39. **Approve Payment to the Milpitas Unified School District for Rental of the Milpitas High School Pools for the 2004-2005 Summer Program (Staff Contact: Aaron Bueno, 586-3226)**
- * 40. **Review and Approve Amendment No. 2 to Consulting Services Agreement Between City of Milpitas and Dr. Thomas Shanks Consulting to Complete Ethics Project Implementation Measures (Staff Contact: Tambri Heyden, 586-3280)**
- * 41. **Approve "As Needed" Transportation Planning Services (Staff Contact: Joe Oliva, 586-3290)**

XX. CLAIMS AND DEMANDS

- * 42. **Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Lou Zenzen, 586-3161)**

XXI. ADJOURNMENT

NO MEETING JULY 20, 2004
NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, AUGUST 3, 2004, AT 7:00 P.M.

CITY OF MILPITAS
Agenda Reports
Milpitas City Council Meeting
July 6, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

XII. PUBLIC HEARINGS

1. APPROVE ENTERTAINMENT EVENT PERMIT AND WAIVE FEES: ART & WINE SUMMER FESTIVAL: AUGUST 21-22, 2004: MILPITAS CHAMBER OF COMMERCE (STAFF CONTACT: GAIL BLALOCK, 586-3001)

BACKGROUND: The Milpitas Chamber of Commerce has submitted an application for an Entertainment Event Permit to hold an Art & Wine Summer Festival along South Milpitas Boulevard between Los Coches and Turquoise Streets and continuing west on Los Coches on Saturday, August 21, and Sunday, August 22, 2004, from 10:00 a.m. to 6:00 p.m. each day. The application has been reviewed and approved by the various City departments and the public hearing advertised as required by the City Ordinance.

The Chamber has also submitted a letter requesting waiver of the application fees for the Entertainment Event Permit and the business license requirements for the Festival. The Chamber, as a non-profit agency, is exempt from the \$100 Entertainment Permit application fee and the Council may waive the \$15 application processing fee. The Council has the authority to exempt the vendors from the requirements for the business licenses. The Council has waived the fees and approved the Entertainment Event Permit in previous years. The Chamber is also requesting permission to advertise the Festival on the City Hall Marquee.

RECOMMENDATION:

1. Close the public hearing.
2. Waive business license fee requirements and approve the Entertainment Event Permit for a Summer Festival to be held on August 21, and 22, 2003, as requested by the Milpitas Chamber of Commerce, subject to the conditions from staff and receipt of a certificate of insurance.

2. ADOPT RESOLUTION ESTABLISHING A RE-ADJUSTED FEE SCHEDULE FOR BUILDING DIVISION SERVICES (STAFF CONTACT: EDGAR RODRIGUEZ, 586-3248)

BACKGROUND: At the June 16, 2004, meeting the Council directed the Chief Building Official to prepare the ordinance for adoption of the Re-Adjusted Fee Schedule.

The City Clerk has advised that fees are adopted by resolution as directed by Ordinance No. 164.2. Resolution No. 6449 establishes the City's comprehensive Fee Schedule. A copy of Resolution No. 6449 with the existing comprehensive Fee Schedule and the proposed amendment with the Re-Adjusted Fee Schedule are included in the Council's packet.

The amendment establishes a Re-Adjusted Fee Schedule for Building Division related services. The Fees proposed in the Re-Adjusted Schedule are based on the size, occupancy, and complexity of projects. The intent is to recover only reasonable costs per plan check, inspection, and administrative services provided. An Executive Summary provides additional information on the existing method of determining fees, the Attorney General's opinion on the use of valuation tables to determine fees, new methodology used to determine fees, and benefits to adopting the proposed Re-Adjusted Fee Schedule.

RECOMMENDATION:

1. Close the public hearing.
2. Adopt the Resolution Approving the Re-Adjusted Fee Schedule for Building Division related services to be effective August 2, 2004.

3. ADOPT RESOLUTION APPROVING REVISED FACILITY USE RULES AND REGULATIONS AND RENTAL FEE STRUCTURE FOR CITY HALL FACILITIES (STAFF CONTACTS: BONNIE GREINER, 586-3227 & GAIL BLALOCK, 586-3001)

BACKGROUND: In January 2004, the Council reviewed proposed revisions and additions to the Facility Use Rules and Regulations and considered use guidelines and fees for rentals of City Hall facilities and adjacent outdoor areas. The Council provided direction to staff regarding a cancellation fee, yearly deposit fee for non-profit groups, and City Hall rental rates for local non-profit groups and Milpitas residents. The guidelines and fees have been revised following the Council's direction and are being presented for Council consideration and approval. It is proposed that the revised guidelines and City Hall fees be implemented as of September 1, 2004.

Included in the Council's agenda packets are a copy of the revised City Facility Use Rules and Regulations with revisions based on Council feedback, a memorandum from Recreation summarizing the revisions to the policy (based on Council comments), a chart showing direct costs to the City, a revised chart showing proposed City Hall facility use fees, and a copy of the January 6, 2004, Council minutes regarding this item.

In addition, staff is recommending that the fee waiver policy be amended to include a statement that insurance fees and personnel costs cannot be waived. These are "out of pocket" expenses to the City. The actual rental fees, however, would still be eligible for waiver.

RECOMMENDATION:

1. Close the public hearing.
2. Adopt Resolution approving the revised Facility Use Rules and Regulations to be effective September 1, 2004.

4. CONTINUE THE REQUEST FOR APPROVAL OF AN AMENDED DENSITY BONUS, "S" ZONE APPROVAL AMENDMENT NO. SA2004-7, USE PERMIT AMENDMENT NO. UA2004-2, LAND EXCHANGE AGREEMENT AND REIMBURSEMENT AGREEMENT FOR THE N. MAIN STREET STORM DRAIN FOR APTON PLAZA – 230 NORTH MAIN STREET (STAFF CONTACT: STACI PEREIRA, 586-3278)

BACKGROUND: This item was continued at the June 15, 2004, City Council meeting in order to allow additional time for the applicant to review and consider staff's recommended Conditions of Approval. Staff is requesting a continuance because we have been unable to meet with the applicant and his attorney to come to agreement on the Land Exchange Agreement. The Land Exchange Agreement is part of the necessary Council actions because it is integral to the entitlements of this project and related to the Conditions of Approval. This continuance should allow sufficient time for a meeting with the applicant and his attorney in time for the Council's meeting on August 3, 2004.

RECOMMENDATION:

1. Keep the public hearing open.
2. Continue the request for approval of an amended Density Bonus, "S" Zone Approval Amendment No. SA2004-7, Use Permit Amendment No. UA2004-2, Land Exchange Agreement and Reimbursement Agreement for the N. Main Street storm drain to August 3, 2004.

5. ADOPTION OF ANALYSIS OF IMPEDIMENTS (AI) TO FAIR HOUSING CHOICE REPORT (STAFF CONTACT: FELIX RELIFORD; 586-3071)

BACKGROUND: The Department of Housing and Urban Development (HUD) requires that each entitlement city prepare an Analysis of Impediments to Fair Housing Report which examines the policies and practices which potentially may limit a resident's ability to choose their housing in an environment free from discrimination. The report examines a variety of public and private practices and policies to determine any impediments to fair housing. The purpose of the AI is to increase housing choice, identify problems and assemble fair housing information (HUD Fair Housing Planning Guide). Entitlement cities are required by HUD to develop action plans to overcome the effects of identified impediments to fair housing choice.

At its meeting on November 4, 2003, City Council authorized the City Manager to execute a contract for \$7,500 with Project Sentinel to prepare the City's Updated Analysis of Impediments to Fair Housing Report. The previous AI report was adopted by the City Council in 1998.

The 2004 Updated AI Report included in the Council's agenda packet has identified several impediments to fair housing within Milpitas such as 1) Demographics, 2) Housing Stock, 3) Land Use and Zoning, 4) Public Policies Housing Affordability, 5) Advertising, 6) Cases of Housing Discrimination and 7) Awareness of Local Fair Housing Services. Staff has reviewed the Analysis of Impediment to Fair Housing Report and has identified those impediments that can be addressed by staff, with no further action by the Council. However, other impediments identified within the report have policy implications, and may require further review and action by the Council prior to forwarding the report to HUD.

Those impediments which can be addressed administratively by staff are:

- **Demographics**-The AI Report recommends that the City increase the distribution of fair housing information in multiple languages. Staff will continue to work with Project Sentinel to provide this information to various population groups in Milpitas. Included in the Council agenda packet are examples of fair housing information that will be distributed in multiple languages.
- **Housing Stock**-The AI Report recommends that the City continue to carry out its plan for increased housing density to encourage use of the density bonus and to monitor the housing stock. With the adoption of the Milpitas Housing Element and Midtown Specific Plan, policies are in place to encourage more high density development (allowing up to 60 dwelling units/per acre in the Midtown Specific Plan), encourage developers to use the density bonus along with RDA financial assistance, and require monitoring the City's housing stock (Housing Element).
- **Public Policies Housing Affordability**- The AI Report recommends that the City continue to follow the strategies in the Midtown Specific Plan and HUD's Five-Year Consolidated Plan. Given the proposed development of approximately 1,700 dwelling units over the next several years of which 20% will be affordable, the Council has assured that these policies and strategies are being fully implemented.
- **Advertising**-The AI Report has not identified any significant evidence of housing discrimination in advertising in the Milpitas Post or San Jose Mercury News. However, discriminatory advertisements were displayed on websites, which displayed characteristics of housing discrimination. Staff and Project Sentinel will continue to work together to address discrimination in advertising, to the extent possible.
- **Cases of Housing Discrimination**-The AI Report recommends that the City increase its outreach efforts to the Asian community given its high percentage of Asians as compared with the number of housing discrimination cases filed by Asians. Staff will work with Project Sentinel to increase outreach efforts to the entire community.
- **Awareness of Local Fair Housing Services**-The AI Report recommends that the City increase its outreach to housing legal and social services, develop a systemic plan to

follow-up with agencies, and update the City's website to include fair housing information. Staff will work with Project Sentinel and other outside agencies over the next several months to address these issues. It should be noted that the City's website currently contains information about fair housing services.

Those impediments that have policy implications are:

- **Land Use and Zoning**-The AI Report recommends that the City eliminate the Conditional Use Permit (CUP) requirement for group homes of 7 to 12 persons and reduce regulations required of secondary dwelling units. These two impediments were included in the 1998 AI Report as well. Staff previously recommended no action to the Council. Both of these items relate to issues pertaining to balancing the quality of life for the residents of local neighborhoods. Furthermore, the City complies with state law and has the option of requiring a CUP for group homes of 7 or more. The City's regulations for secondary units were just updated last year to comply with recent state law changes. Staff recommends no changes to the secondary dwelling unit or the group home regulations.

RECOMMENDATION:

1. Close the public hearing.
2. Adopt the Analysis of Impediments Fair Housing Report subject to maintaining the currently zoning regulations for group homes and secondary dwelling units.

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: June 16, 2004

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

***RA5. AUTHORIZE ISSUANCE OF PURCHASE ORDER: CONSTRUCTWARE SOLUTIONS GROUP, LIBRARY PROJECT. (PROJECT NO. 8162) (STAFF CONTACT: MARK ROGGE, 586-3403)**

BACKGROUND: In preparation for the Library Project, staff has been evaluating means and methods to manage large projects and provide information tracking and reporting that will support the City. Constructware is a project management software that has been used by Swinterton Management and Consultanting, and other project management firms to successfully manage large construction projects. This software provides for real time coordination with consultants, contractors and project stakeholders by tracking project design and construction related correspondence, provides budget tracking, and documentation management. The Special Projects and Information System staff has evaluated the proposed software and believes the software will be an important tool to assist tracking and reporting of project costs and milestones.

Staff has obtained a quotation for the software from Constructware Solutions Group, a State of California Multiple Award Schedule (CMAS) supplier. This method of purchase is sanctioned in Section 1-2-5.06, "Purchase through a Government Entity," of the Municipal Codes. Staff recommends Constructware Solutions Group to provide the required software licensing and training services for use of the software. Staff has negotiated the fees for these services not to exceed \$9,000, which is considered reasonable for the work. There are sufficient funds in the project budget(s) to cover this additional expense.

RECOMMENDATION: Waive the bid process and authorize staff to execute a purchase order with Constructware Solutions Group, in the amount not to exceed \$9,000.00, subject to approval as to form by the City Attorney.

***RA6. AWARD UPGRADE OF FIRE ALARM PANEL; CIVIC CENTER (PROJECT NO. 8026)
(STAFF CONTACT: GREG ARMENDARIZ, 586-3402)**

BACKGROUND: The City's Emergency Dispatch Center has recently upgraded their communications equipment to allow the receipt of two character messages from fire alarm systems. This allows Dispatch to better determine the location of the emergency, the nature of the call received, and the specific device that triggered the alarm call. This new feature allows the Dispatcher to isolate real emergency calls from those attributed to device failure or malfunction, and to better manage the type of response action.

The Fire Alarm Panel installed in the new City Hall Building is a single character message device, limiting the amount of information the Emergency Dispatch Center can receive when an alarm call is received. In order to enhance the communication capability between the City Hall Building and Dispatch, an upgrade to the Fire Alarm Panel is recommended.

Staff has solicited quotations from authorized dealers in the area, and has obtained two quotes, the lowest being in the amount of \$22,000 from Diversified Fire Products, which is considered reasonable. Staff recommends award of the upgrade, testing and reprogramming of the City Hall Fire Alarm Panel to Diversified Fire Products. Sufficient funds are available in the City Hall project budget for this work. After approval of this purchase order the remaining contingency is \$39,803.

RECOMMENDATION: Award upgrade of City Hall Fire Alarm Panel to Diversified Fire Products for the amount of \$22,000.

**RA7. AUTHORIZE STAFF TO NEGOTIATE AN ARCHITECTURAL AND ENGINEERING
CONSULTANT SERVICES CONTRACT WITH GROUP 4 ARCHITECTURE,
RESEARCH & PLANNING, INC., FOR LIBRARY DESIGN, (PROJECT NO. 8162)
(STAFF CONTACT: MARK ROGGE, 586-3403)**

BACKGROUND: This project is included in the current five-year Capital Improvement Program (CIP) and provides for the design of the new library including preparation of construction plans and specifications.

Staff interviewed and evaluated nine professional consultants in conformance with the City's consultant selection process, and recommended the three most qualified firms for further review by the Library Subcommittee. On June 14, 2004, the Library Subcommittee interviewed the three highest ranked consultants, and found the firm of Group 4 ranked the highest. The Library Subcommittee further recommended that the City Council hear a presentation and authorize staff to negotiate an Architectural & Engineering contract with Group 4.

Staff will make a presentation on the selection process, followed by a brief presentation by Group 4 about their firm. Staff anticipates completing negotiations and recommending approval of the design services contract to the Council at the August 3, 2004, meeting. A staff memo included in the Council packet provides additional information and background on the consultant selection process.

RECOMMENDATION: Authorize staff to negotiate a consulting services contract with Group 4 Architecture, Research & Planning, Inc. for the design of the library.

***RA8. AWARD CONSTRUCTION CONTRACT: INTERIM SENIOR CENTER INTERIOR &
KITCHEN IMPROVEMENTS (PROJECT NO. 8151) RANIS CONSTRUCTION &
ELECTRIC, INC. (STAFF CONTACT: MARK ROGGE, 586-3257)**

BACKGROUND: On April 15, 2003, the City Council approved the conceptual improvements for an interim Senior Center at the Cracolice Building, and established a new Capital Improvement Project (CIP) No. 8151 to provide for the improvements to the building to support the Senior Center activities.

The first phase of the project, which provided for the addition of a new modular classroom building was completed early this year. This next phase of the project provides improvements to the kitchen, bathrooms, utility closet, classrooms, and creates a game room in the Interim Senior Center Cracolice Building. The Engineer's estimated construction cost was \$194,000.00.

The project was advertised and sealed bid proposals were opened on May 13, 2004. The bid proposals ranged from \$164,000 to \$340,200, and the lowest responsible bidder is Ranis Construction & Electric, Inc. Funds are available in the project account.

RECOMMENDATION: Award Construction Contract to Ranis Construction & Electric, Inc., in the amount of \$164,400.00.

RA9. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

* **6. APPROVE THE MAYOR'S APPOINTMENTS TO THE PARKS, RECREATION, AND CULTURAL RESOURCES COMMISSION AND SENIOR ADVISORY COMMISSION: MAYOR ESTEVES**

BACKGROUND: Mayor Esteves is recommending the following appointments to City commissions:

Parks, Recreation, and Cultural Arts Commission

Appoint Raymond Serena to the Alternate 2 position for a term expiring June 2007.

Senior Advisory Commission

Appoint Barbara Ebright to the Alternate 2 position for a term expiring December 2005.

Copies of applications for these two commissions are included in the Council's agenda packets.

RECOMMENDATION: Approve the Mayor's appointments of Raymond Serena to the Alternate 2 position (term expiring June 2007) on the Parks, Recreation, and Cultural Resources Commission and Barbara Ebright to the Alternate 2 position (term expiring December 2005) on the Senior Advisory Commission.

7. DISCUSSION AND CONCEPTUAL APPROVAL OF PROVIDING MAINTENANCE COSTS FOR COMMUNITY COLLEGE CLASSES AT MILPITAS HIGH SCHOOL: MAYOR JOSE ESTEVES AND VICE MAYOR PATRICIA DIXON

BACKGROUND: The City and the Milpitas Unified School District Committee has been able to establish a partnership with the area's community colleges to provide community college classes at Milpitas High School as a direct service to Milpitas residents. All of the costs for the community college classes in Milpitas can be covered except for the hourly facility maintenance costs of the high school classrooms, which is \$15 per hour, and provides for the opening, closing, and associated maintenance of the high school classroom. The Mayor and Vice Mayor propose for Council consideration that the City support the project by paying the classroom maintenance costs.

Until enrollment is established, the number of classes to be held is not known. However, a projection of ten 3-hour per week classes would make the estimated maintenance costs:

3 hours per week @ 16 weeks = 48 hours per class per semester

48 hours X 10 classes = 480 hours x \$15 = \$7,200 per semester

\$7,200 X 2 semesters = \$14,400 per year

All other fees and costs would be borne by students and the community colleges. The Mayor and Vice Mayor would also propose a modest advertising budget to promote the community college classes in Milpitas. That cost is projected to be no more than \$1,500.

RECOMMENDATION: Approve the City's support of community college classes held at Milpitas High School and conceptually approve a \$15 per hour classroom maintenance costs to support the use of the high school classrooms. After enrollment has been established, Council would be presented with a final budget.

8. APPROVAL OF A RESOLUTION SUPPORTING EXTENDING THE STATUTORY AUTHORIZATION FOR THE SAFE ROUTES TO SCHOOL PROGRAM: VICE MAYOR PATRICIA DIXON

BACKGROUND: The Santa Clara County Valley Transportation Authority is encouraging cities to adopt a Resolution in support of extending the statutory authorization for the Safe Routes to School Program.

The Safe Routes to School Program was created and signed into law in 1999, effective January 1, 2000. Under this program, Caltrans is required to make grants available to local government agencies based on results of a statewide competition involving the submission of proposals for funding from project sponsors. This program will be expiring on January 1, 2005. See memorandum from Santa Clara VTA in Agenda packet for additional detail of benefits to local governments by continuation of this Program.

RECOMMENDATION: Adopt a Resolution in support of extending the statutory authorization for the Safe Routes to School Program.

Transportation Subcommittee

9. APPROVE RELEASE OF RFQ/RFP FOR BART STATION TRANSIT AREA PLAN (STAFF CONTACT: JOE OLIVA, 586-3290)

BACKGROUND: In March 2002, the Milpitas City Council adopted the Midtown Specific Plan. The Specific Plan specified the preparation of a Transit Area Plan/Precise Plan in the BART/Light Rail Station vicinity prior to development occurring on those parcels. Since that time the Valley Transportation Authority (VTA) has prepared a Draft Environmental Impact Statement/Draft Environmental Impact Report (DEIS/DEIR) for the BART Extension to Milpitas, San Jose and Santa Clara. The DEIS/DEIR analyzes several land use concepts immediately adjacent to the future BART Station.

In response to the VTA's DEIS/DEIR, Milpitas staff submitted additional BART Station concepts for consideration. Since a multi-modal BART Station and Light Rail Station will affect land uses for a considerable area around the stations, the Transit Area Plan/Precise Plan will include the Great Mall of the Bay Area and under-utilized properties to the east. Staff is in the process of developing a Request for Qualifications/Request for Proposal (RFQ/RFP) to solicit professional consultant services for the preparation of a Transit Area Plan/Precise Plan.

On June 24th, the City Council Transportation Subcommittee reviewed the key issues to be addressed in the RFQ/RFP and recommended approval to the City Council. The key issues to be addressed are contained in an attachment included in the Council's agenda packet. Since this project will require high-level policy decisions throughout preparation of the Plan and supporting

Environmental Review, staff and Council Transportation Subcommittee requests that the City Council appoint a Transit Area Plan Council Subcommittee. This Subcommittee will convene upon successful Consultant selection and Council approval of the Consultant contract.

RECOMMENDATION:

1. Proceed with the development and release of the BART Station Transit Area Plan/Precise Plan RFQ/RFP and release in July 2004.
2. Pursue VTA Community Design and Transportation (CDT) Planning Grant funds as they become available.
3. Appoint two members of the City Council to serve on the Transit Area Plan Subcommittee.

*** 10. APPROVE REQUEST TO SUBMIT A GRANT APPLICATION TO THE METROPOLITAN TRANSPORTATION COMMISSION FOR THE 2004/2005 TRANSPORTATION FOR LIVABLE COMMUNITIES (TLC) GRANT (STAFF CONTACT: JANICE NADAL, 586-3291)**

BACKGROUND: The Metropolitan Transportation Commission (MTC) has issued a “call for projects” for the Transportation for Livable Communities (TLC) Capital Program. The purpose of the TLC program is to support community-based transportation projects that bring new vibrancy to downtown areas, commercial cores, neighborhoods, and transit corridors, enhancing their amenities and ambiance and making them places where people want to live, work and visit. TLC provides funding for projects that are developed through an inclusive community planning effort, provide for a range of transportation choices, and support connectivity between transportation investments and land uses. Project grant amounts range from \$500,000 to \$3 million per project. A federal local match of 11.5 percent, minimum, of the total TLC project cost is required. Applications are due July 16, 2004. Funding will be awarded in September.

At the February Transportation Subcommittee meeting, the City’s Midtown Main Street design consultant presented preliminary streetscape and gateway entry plans. Those plans will be completed and presented to the community, the Planning Commission and the City Council in August 2004. A section of this project meets the TLC capital grant criteria and would rank very well in competing for this grant. This section is the Entry, Typical and Core segments located between the Weller/Main bus transfer center and Serra Way in the Midtown Specific Plan area.

The total project cost is \$2 million. In order to be competitive, the City should commit a 50% local match - \$1 million. Although funding has been identified for these segments in conjunction with the library and parking garage projects, grant funding will allow dollars to be reallocated to an unfunded portion of the project, such as Serra Way, which is important to complete simultaneously with the streetscape improvements to Abel Street that will be funded by other area developers. The City Council Transportation Subcommittee recommended approval of this item to the City Council at its June 24th meeting.

RECOMMENDATION: Approve request to submit a grant application to the Metropolitan Transportation Commission for the 2004/2005 Transportation for Livable Communities (TLC) Grant.

*** 11. APPROVE PRIORITIES FOR YEAR 2000 MEASURE A TRANSIT PROGRAM (STAFF CONTACT: JOE OLIVA, 586-3290)**

BACKGROUND: In November 2000, the voters in Santa Clara County approved a half-cent sales tax to fund future transit improvements from years 2006 through 2036. The ballot measure referred to as Measure A passed with a 71 percent approval. The ballot measure included approximately \$8 billion in transit projects, including \$2 billion committed to the BART extension Project to Santa Clara County.

Since the passage of Measure A and the downturn in the economy, the VTA has experienced a severe decline in ridership and operating revenue. The VTA Board has bonded against the future sales tax (\$550 million) to fund BART preliminary engineering and to assist in subsidizing existing bus operations. The priority of the Measure A Transit projects has been a hotly debated issue.

The Group 4 Cities consisting of Milpitas, Morgan Hill and Gilroy have been requested to submit their priorities to the VTA Policy advisory Committee (PAC). Included in the Council's agenda packet is the list of Measure A Transit Projects. The PAC's recommendations will be forwarded to the VTA board for consideration in August. The City Council Transportation Subcommittee met on June 24th and recommended the priorities listed below for the Year 2000 Measure A Transit Program.

RECOMMENDATION: Forward to the VTA PAC the following priorities:

1. Operating Assistance – 2006 through 2036
2. BART to Milpitas, San Jose and Santa Clara
3. Mineta San Jose International Airport APM Connector
4. Caltrain Upgrades and Improvements
5. ACE Upgrades

XV. UNFINISHED BUSINESS

12. APPROVAL OF RESOLUTIONS TRANSMITTING TWO INITIATIVE MEASURES [ONE AN INITIATIVE EXTENDING THE TERM OF THE ELECTIVE MAYOR FROM TWO TO FOUR YEARS AND THE SECOND AMENDING THE EXISTING TERM LIMITS ORDINANCE TO PROVIDE THAT A PERSON MAY SERVE A MAXIMUM OF THREE CONSECUTIVE ELECTIVE TERMS AS A CITY COUNCILMEMBER OR TWO CONSECUTIVE FOUR YEAR TERMS AS THE MAYOR SUBJECT TO AN OVERALL LIMITATION OF FOUR CONSECUTIVE TERMS] TO THE COUNTY REGISTRAR'S OFFICE FOR PLACEMENT ON THE NOVEMBER 2004 GENERAL ELECTION BALLOT; DIRECTION TO CITY ATTORNEY TO PREPARE IMPARTIAL ANALYSIS AND SELECTION OF CITY COUNCIL REPRESENTATIVES TO PREPARE BALLOT ARGUMENTS AND REBUTTALS (STAFF CONTACT: STEVE MATTAS, 586-3040)

BACKGROUND: On June 1, 2004, the City Council received a presentation from the Community Advisory Commission (CAC) and reviewed the results of a community survey related to the various impacts of a ballot measure to change the term length of the elective office of mayor from two to four years. The City Council also reviewed draft language for the proposed ballot measures and the proposed ballot questions. The City Council directed staff to prepare the final version of the ballot measure and ballot questions, and asked that staff prepare additional ballot materials for an initiative to amend the existing term limits ordinance and modify term limits on the offices of elected City Council members and the Mayor. During the meeting, two different proposals for the term limits measure were discussed. The first proposal, consistent with a recommendation from the CAC, modified the existing term limit for the office of Mayor from a maximum of three consecutive terms as Mayor (a total of six years under the current term limits ordinance) to two consecutive four-year terms (assuming the voters approve extending the term of Mayor from two years per term to four years per term). Two members of the City Council also discussed the possibility of having two four-year term limits regardless of whether the terms are served solely as Mayor or Councilmember or one term in each capacity. Additionally, the City Council asked staff to analyze the implications of the mayoral term extension and mayoral and councilmember term limits ordinances if adopted by the voters, and to suggest how the limits would impact incumbent elected officials.

California Government Code section 36502 authorizes general law cities to submit proposals to limit the number of terms a member of the city council or the mayor may serve, and provides that any such proposal "shall apply prospectively only and shall not become operative unless it is

submitted to the electors of the city at a regularly scheduled election and a majority of the votes favor the adoption of the proposal.” As defined in Black’s Law Dictionary, 7th Edition, prospective means “effective or operative in the future.” Thus, if approved by the voters, the proposed term limits would go into effect with the first election following certification of the ballot results. The Mayoral term extension initiative is worded so as to become effective with the November election in 2008. In contrast, pursuant to state law the modification to the existing term limits provision would take effect with the election in November 2006. The initiative measure modifying the existing term length for the term of office of the Mayor is set forth in one of the two resolutions included in the packet. As prepared, this change would only be effective if the modification to the existing term limits, as set forth in the second resolution, was also approved by the voters.

The existing term limits ordinance, codified at Milpitas Municipal Code section I-400-1, provides that “A person may serve a maximum of three consecutive elective terms as either a City Councilmember or as the Mayor. However, if a Councilmember is elected Mayor or the Mayor is elected Councilmember, that person may serve a combined total of no more than four consecutive elective terms. At any municipal election after the expiration of two years following said consecutive elective terms, such former Councilmember or Mayor may again seek election to City Council or as Mayor.” The current term limits ordinance was adopted by special election in June of 1996 and went into effect with the November election of 1996. Incumbent elective officials are thus subject to the current ordinance.

Under the first alternative modification to the term limits, as presented by the CAC, the Municipal Code would be revised to read as follows (changes in bold):

“A person may serve a maximum of three consecutive terms as a City Councilmember. A person may serve a maximum of two consecutive elective terms as Mayor. However, if a Councilmember is elected Mayor or the Mayor is elected Councilmember, that person may serve a combined total of no more than four consecutive elective terms. At any municipal election after the expiration of two years following said consecutive elective terms, such former Councilmember or Mayor may again seek election as a City Councilmember or Mayor.”

If adopted by the voters, this amendment to term limits would go into effect with the November election of 2006. The accompanying measure, extending the mayoral term length from two to four years, would by its own terms go into effect with the November, 2008 election. Thus, the years 2004-2008 would have two mayoral elections (in 2004 and 2006), but only the 2006 elections would be subject to new mayor and council numerical term limits effective November, 2006. The effect of these changes on the present Mayor and City Council Members is set forth in detail in the attachment.

Under the alternative proposal of limiting the Mayor and City Council Members to two four-year terms regardless of which office is held, as briefly discussed at the City Council meeting, the existing term limits ordinance would be amended and simplified to provide that a person may serve a maximum of two consecutive terms as either a City Council Member or Mayor. Any person who has served in two consecutive terms, as either Mayor, Council Member, or as a Council Member who is elected Mayor or vice versa, would be ineligible for reelection and would need to wait for a full two year period before again seeking election as Councilmember.

As with the alternative preceding proposal, if approved by the voters, this term limits measure would go into effect in time for the November, 2006 election. The impact of this proposed change on incumbents is also set forth in the attachment.

In the event the City Council decides to place the initiative measure on the November 2, 2004 ballot, the City Council should also direct the City Attorney to prepare an impartial analysis for the ballot measures and should decide whether the City Council desires to authorize specified members of the City Council to prepare and submit a ballot argument in favor of the initiative

measure and to prepare and submit a rebuttal argument in the event an argument is filed against the ballot measure. These latter actions, if necessary, should be accomplished by motion.

RECOMMENDATION: Consider the proposed alternative measures and determine whether to adopt the resolutions calling for placement of the ballot measures on the November 2, 2004 ballot. In the event the City Council elects to place the measure on the ballot, staff recommends that the City Council direct the City Attorney to prepare the impartial analysis and that the City Council determine whether it desires to appoint representatives to prepare ballot arguments in favor of the initiative measure.

*** 13. SOLID WASTE SERVICE FRANCHISE EXTENSION: POTENTIAL LEVEL OF SERVICE UPGRADES (STAFF CONTACT: DARRYL WONG 586-3345)**

BACKGROUND: On April 20, 2004, the City Council authorized staff to extend the BFI franchise agreement with BFI for a ten-year period. BFI would provide, among other things, no cost street sweeping services during the calendar years 2004-2008.

Staff has initiated discussions with BFI and has developed a list of service improvements to consider under the new contract. These improvements are discussed in the memo found in the Council's agenda packet. Staff proposes to negotiate service improvements and incorporate cost effective improvements into the contract. Staff will return with a contract extension in August 2004 and with a new rate adjustment for calendar years 2005 and 2006, in December 2004.

RECOMMENDATION: Authorize staff to proceed with the BFI Franchise extension and rate adjustment negotiations.

XVI. NEW BUSINESS

14. CONSIDERATION OF RESOLUTION PLACING AN INITIATIVE MEASURE ON THE NOVEMBER 2, 2004, BALLOT TO REQUIRE, THROUGH DECEMBER 31, 2018, VOTER APPROVAL OF ANY MODIFICATIONS TO THE EXISTING HILLSIDE LAND USE REGULATIONS ORDINANCE (MILPITAS ORDINANCE NO. 38.672); POTENTIAL DIRECTION TO CITY ATTORNEY TO PREPARE IMPARTIAL ANALYSIS AND SELECTION OF CITY COUNCIL REPRESENTATIVES TO PREPARE BALLOT ARGUMENT IN FAVOR OF PROPOSED INITIATIVE MEASURE AND REBUTTAL ARGUMENT AS NECESSARY (STAFF CONTACT: STEVE MATTAS, 586-3040)

BACKGROUND: At the City Attorney Subcommittee meeting held on June 18, 2004, the Subcommittee requested that the City Attorney's office prepare a ballot measure that would institute a requirement that any modification to the Hillside Ordinance (Ordinance No. 38.672 - adopted by the City Council on September 15, 1992) be approved by the voters at an election prior to taking effect. If approved by the voters, the newly-imposed requirement for voter approval of any modifications would become effective ten days after the certification of the election results and would remain in effect through December 31, 2018. The termination date for the voter approval requirement for any modifications to the Hillside Ordinance would coincide with the termination date for the Urban Growth Boundary previously approved by the voters of Milpitas.

In the event the initiative measure is placed on the ballot and approved at the election, the voter approval requirement will remain in effect until December 31, 2018. Upon expiration of the proposed initiative measure, the Hillside Ordinance would remain in effect, but could once again be modified by action of the City Council without first seeking voter approval of the change.

The proposed initiative measure does not modify any current provision of the Hillside Ordinance. Thus, the same land use regulations that presently apply to property within the Hillside Combining District would continue to apply. As the proposed initiative measure does not modify

any existing land use regulations, the City Council's action to approve the resolution placing the initiative measure on the ballot is exempt from CEQA pursuant to CEQA Guideline Regulations 15061(b)(3), 15307 and 15308. Guidelines Section 15061(b)(3) provides, in relevant part, that "CEQA applies only to projects, which have the potential for causing a significant effect on the environment." As the initiative measure does not modify any existing land use regulations related to development within the Hillside Combining District, the measure does not have potential for causing any significant effect on the environment. Guidelines sections 15307 and 15308 exempt from CEQA actions taken by regulatory agencies that involve procedures for the protection of the natural resources and the environment respectively. The addition of a requirement for voter approval prior to any modifications of the existing Hillside Ordinance, which itself identifies as part of its purposes the avoidance of ecological/environmental disasters and the need to address environmental concerns as part of development application, provides additional procedures for protecting the natural resources and environment of Milpitas hillside property.

In the event the City Council decides to place the initiative measure on the November 2, 2004 ballot, the City Council should also direct the City Attorney to prepare an impartial analysis and should decide whether the City Council desires to authorize specified members of the City Council to prepare and submit a ballot argument in favor of the initiative measure and to prepare and submit a rebuttal argument in the event an argument is filed against the ballot measure. These latter actions, if necessary, should be accomplished by motion.

RECOMMENDATION: Vice-Mayor Dixon and Council Member Polanski recommend that the City Council approve the resolution placing the initiative measure instituting a voter approval requirement for any amendments to the existing Hillside Ordinance (Ordinance No. 38.672) on the November 2, 2004 ballot. In the event the City Council elects to place the measure on the ballot, staff recommends that the City Council direct the City Attorney to prepare the impartial analysis and that the City Council determine whether it desires to appoint representatives to prepare ballot arguments in favor of the initiative measure.

15. PROVIDE STAFF DIRECTION ON COST RECOVERY FOR REVIEW OF PLANNING APPLICATIONS AND OTHER SERVICES (STAFF CONTACT: JAMES LINDSAY, 586-3274)

BACKGROUND: On September 2, 1997, the Milpitas City Council approved the most recent fee schedule. As per the attached section of the Milpitas Municipal Code, Chapter 3, Title IV, (Fee and Service Charge Revenue/Cost Comparison System) adopted in 1995, the intent of the fee and service charge comparison system is to provide for the establishment and recovery of specified percentages of "costs reasonably borne" for services and which do not exceed the cost for providing services. The current fee schedule of "costs reasonably borne" to be recovered provides for 100% cost recovery for all planning services, with the exception of zoning code interpretations (50%), planning research (10%), appeal of staff interpretations (0%), preliminary plan reviews (0%) and General Plan update surcharge (0%).

On October 21, 2003, the Milpitas City Council approved a request for FY2002-2003 accounts receivable write-offs including giving staff direction to bring back a proposal on increasing the initial deposit amount for private job accounts. For this reason and others, staff conducted a planning fee study that encompassed the review of prior projects, existing fee structure, staff application review time, and a fee comparison to other cities. Based on the fee study, staff determined:

- The current recovery rate for planning services is 85% for Private Job (PJ) applications and 17% for flat fee applications; not the 100% provided for in the municipal code. A survey of 8 Bay Area cities revealed that 63% of Planning Department fee rates provide for 100% cost recovery.

- Sixty-two (62%) of all PJ account projects over the past 3 years exceeded the initial deposit amount. This requires finance department staff to send multiple invoices to recover the cost of review services beyond the deposit amount and up to the cap.

In addition, the current Schedule of Fees and Service Charges does not provide for any recovery for preliminary application reviews or General Plan updates. Typically, planning staff averages two (2) preliminary application meetings for large developments. Preliminary reviews provide the opportunity for the applicant and City staff to collaborate from the early stages of project development, prevent multiple submittals, and ensure complete submittals. By state law, the General Plan must be periodically updated “when circumstances change” at a minimum cost of approximately \$500,000 every eight to ten years. The City has been absorbing the cost for both these activities.

The 1997 Schedule of Fees and Service Charges does not provide for new services either, such as document imaging and stormwater (C.3) permit requirements. Planning division files are converted to CD-ROM for long-term storage using document imaging technology. Staff analysis determined a “fully burdened rate” for document imaging related staff services would recover approximately \$5,720.00 per year. Engineering staff has determined the new annual report and inspections will cost \$275.00 for projects limited to landscape percolation features and \$625.00 for all other new development and redevelopment projects.

If it is the Council’s desire to reestablish the 1995 intent of 100% cost recovery for those planning services specified in the Municipal Code, reduce Finance Department billing and collections and provide for some percentage of recovery for costs currently borne by the City, this can be done by increasing initial PJ deposit amounts, adjusting the cost cap for planning services to capture salary increases since 1997 and compensate for the greater number of hours to review complex projects, converting certain flat fees to PJ accounts and establishing fees for activities not provided for in the municipal code.

RECOMMENDATION: Direct staff to prepare an updated fee schedule that a) achieves the intent of the municipal code cost recovery system adopted in 1995 and b) expands the system to services not currently recovered.

*** 16. APPROVE FILLING VACANT POSITION: BUILDING INSPECTOR (STAFF CONTACT: EDGAR RODRIGUEZ, 586-3248)**

BACKGROUND: The scheduled retirement in July 2004 of a Building inspector will create a total of three inspector vacancies in the Building Division.

Although acceptable service level is presently provided, the loss of this position and the expected increase in inspection requests will affect customer service and may create delays in inspection response.

RECOMMENDATION: Approve recruitment of one building inspector vacancy.

*** 17. APPROVE CO-SPONSORSHIP WITH THE MILPITAS CHAMBER OF COMMERCE OF A CANDIDATES' FORUM (STAFF CONTACTS: THOMAS WILSON & GAIL BLALOCK, 586-3001)**

BACKGROUND: For each local election, the Milpitas Chamber of Commerce has sponsored a Candidates' Forum as a way to familiarize the voters in Milpitas with the candidates. The Chamber makes all the arrangements, invites all candidates being voted on in Milpitas, determines the format, and publicizes the event. Historically, the forum has been held in the City Council Chambers so that the event may also be broadcast on local cable television.

This year staff is recommending the City co-sponsor the forum with the Chamber by providing the use of the Council Chambers and broadcasting the event on Channel 15. All other arrangements, including the conduct of the forum, would be handled by the Chamber.

RECOMMENDATION: Approve Co-sponsorship with the Milpitas Chamber of Commerce of the Candidates' Forum as specified above.

*** 18. APPROVE FEE WAIVER FOR RENTAL OF CITY-OWNED PORTABLE STAGE: SOUTH BAY KIDS (STAFF CONTACT: BONNIE GREINER, 586-3227)**

BACKGROUND: The South Bay Kids performing group will again be performing at this year's annual Art & Wine Summer Festival August 21 and 22, 2004 and is requesting waiver of the rental fee for use of the City's portable stage. South Bay Kids does not get paid for performing and cannot afford to pay the \$350 per day rental fee. The Council has waived the rental fee in the past and the Chamber has paid the towing fee and is willing to do it again this year. A copy of the request from Joe Santoro of South Bay Kids is included in the Council's agenda packets.

RECOMMENDATION: Approve the request from South Bay Kids to waive the rental fee for use of the City's portable stage on August 21 and 22, 2004.

*** 19. APPROVE APPROPRIATION OF \$540.00 GRANT AWARDED TO RECREATION SERVICES BY THE NORTHERN CALIFORNIA GRANTMAKERS. (STAFF CONTACT: AARON BUENO, 586-3226)**

BACKGROUND: Recreation Services has acquired a grant of \$540.00 from Northern California Grantmakers. This grant was received from the Northern California Grantmakers Summer Youth Program (SYP) 2004. Grants were available for any agency that would enrich summertime programs targeting disadvantaged children within the San Francisco Bay Area. Grants were awarded to organizations offering enhanced activities that promoted cultural understanding, participation in community service, environmental awareness, and academic enrichment. Other qualifications for receiving this grant were that all programs must be free or very low cost and that funds requested be used to assist the public agency in purchasing sports and arts supplies, or provide additional monies for field trips and camping program costs.

The \$540.00 grant received from Northern California Grant makers will be used to purchase recreational and sports equipment for the Recreation Services Summer Junior Lifeguard Program and Water Polo Camp.

If appropriation is approved, staff requests that City Council accept the grant and increase the fiscal year 2004-2005 budget appropriation for supplies by \$540.00 for the Aquatics program function # 171.

RECOMMENDATION: Approve the appropriation of the \$540.00 grant received from the Northern California Grantmakers to be added to the Fiscal Year 2004-05 budget for function 171 – Aquatics and authorize staff to use the funds accordingly.

*** 20. APPROVE APPROPRIATION OF \$760.00 GRANT AWARDED TO RECREATION SERVICES BY THE NORTHERN CALIFORNIA GRANTMAKERS (STAFF CONTACT: DALE FLUNOY, 586-3228)**

BACKGROUND: Recreation Services has acquired a grant of \$760.00 from Northern California Grantmakers. Grants were made available for any agency that would enrich summertime programs targeting disadvantaged children within the San Francisco Bay Area and to organizations offering enhanced activities that promoted cultural understanding, participation in community service, environmental awareness, and academic enrichment. Other qualifications for receiving this grant were that all programs must be free or very low cost and that funds requested

be used to assist the public agency in purchasing sports and arts supplies, or provide additional monies for field trips and camping program costs.

The \$760.00 grant received from Northern California Grantmakers will be used to offset the cost of educational materials, arts and crafts supplies, recreational and sports equipment and/or field trip costs for Recreation Services Summer Camp Stay & Play.

If appropriation is approved staff is requesting that City Council accept the grant and increase the Fiscal Year 2004-05 budget appropriation for supplies by \$760.00 for function 164 – Camp Stay & Play.

RECOMMENDATION: Approve the appropriation of the \$760.00 grant received from the Northern California Grantmakers to be added to the Fiscal Year 2004-05 budget for Function 164 – Camp Stay & Play and authorize staff to use the funds accordingly, subject to approval as to form by the City Attorney.

XVII. ORDINANCES

21. CONSIDERATION OF “OPEN GOVERNMENT” ORDINANCE ESTABLISHING REGULATIONS GOVERNING THE CONDUCT OF ELECTED AND APPOINTED OFFICIALS AND REQUIRED DISCLOSURE OF INTERESTS AND CONTACTS (STAFF CONTACT: STEVE MATTAS, 586-3040)

BACKGROUND: At the June 18, 2004, meeting of the City Attorney Subcommittee, the Subcommittee requested preparation of an ordinance governing the public disclosure of financial conflicts of interest for elected and appointed officials, with related provisions regarding conduct of elected and appointed officials and other issues regarding open government and the promotion of accountability and transparency in affairs of City governance. The subcommittee members presented the City Attorney with direction for drafting the ordinance, including a list of general policy objectives and more specific provisions for incorporation in the proposed ordinance.

The ordinance contains several interrelated provisions, which focus on the promotion of transparency and accountability for local elected and appointed officials. It requires City Council members to publicly announce actual or potential financial conflicts of interest with agenda items at the start of City Council meetings, and requires a period of public reflection and recognition regarding the implementation of values contained in the City’s Code of Ethics. The ordinance regulates disclosure and public access to financial conflict forms of public officials. It also requires the City Clerk to prepare City Council and Planning Commission attendance and voting records as a public record, and requires city officials to submit updated meeting calendars to the City Clerk. It includes provisions encouraging the use of available technologies to promote citizen access to City resources. Additionally, the ordinance prohibits City Council and Planning Commission members from using their former office to assist applicants through the City process once they have left office, and prohibits membership on certain enumerated volunteer positions while in office. It creates a registration requirement for lobbyists, and disclosure requirements for City Officials who enlist the help of lobbyists and consultants. It includes a retention and access policy for summary closed session minutes. Finally, the ordinance creates distribution requirements for reports and work requests to the City Council.

RECOMMENDATION: The City Attorney Subcommittee recommends that the City Council consider Ordinance No. 262 and then:

1. Waive reading beyond the title; and
2. Introduce Ordinance No. 262

XVIII. RESOLUTIONS

22. ADOPT A RESOLUTION OF NECESSITY REGARDING ACQUISITION OF PROPERTY FOR THE ABEL/CALAVERAS RIGHT TURN LANE (PROJECT NO. 4186) (STAFF CONTACT: MIKE MCNEELY, 586-3301/GREG ARMENDARIZ, 586-3401)

BACKGROUND: The approved Capital Improvement Program (CIP) includes the Abel/Calaveras Right Turn Lane, Project No. 4186, which will construct a dedicated right turn lane from north bound Abel Street to eastbound Calaveras Blvd. All of the costs of this project are from developer funds.

Acquisition of the roadway right-of-way is necessary from the following four property owners: Pacific Bell, Albert J. Whitt Jr./Donald Kennedy, and N&M Plaza, LLC Borelli Investment Company. The areas (in square feet) of the right-of-way to be acquired are: 1,742 sq. ft. in fee and 2,399 sq. ft. for a temporary construction easement from Pacific Bell, and 3,334 sq. ft. in fee and 4,950 sq. ft. for a temporary construction easement from Albert J. Witt Jr./ Donald Kennedy, and 1,246 in fee and 1,933 for a temporary construction easement from N&M Plaza, LLC Borelli Investment Company.

Notice of the hearing to consider the adoption of a Resolution of Necessity has been mailed to representatives of the property owners in accordance with California Code of Civil Procedure.

A Notice of Exemption for the project was filed in the office of the County Clerk of the County of Santa Clara; and on March 29, 2004, the Notice of Determination was posted by the County Clerk.

The Resolution of Necessity contains four findings that are required by California Eminent Domain Law:

1. The public interest and necessity require the project;
2. The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
3. The property sought to be acquired is necessary for the project;
4. The offer to purchase has been submitted to the owner or owners.

The Resolution of Necessity must be approved by at least a two-thirds vote.

RECOMMENDATION: Conduct hearing and adopt a Resolution of Necessity.

*** 23. ADOPT RESOLUTION APPROVING LOT LINE ADJUSTMENT: KATHLEEN A. AND BARTON P. SIMMONS, 260 AND 270 SOUTH MAIN STREET (STAFF CONTACT: MEHDI KHAILA, 586-3328)**

BACKGROUND: The property owner (Kathleen A. and Barton P. Simmons) wishes to adjust the common lot line between Parcels 1 and 2. The proposed adjustment is necessary to relocate an existing property line under the building to the edge of the building. Planning and Building Divisions have no objection to the proposed adjustment.

RECOMMENDATION: Adopt resolution authorizing the lot line adjustment.

*** 24. ADOPT RESOLUTION GRANTING INITIAL ACCEPTANCE: CALAVERAS BLVD./PIEDMONT ROAD-EVANS ROAD INTERSECTION IMPROVEMENTS (PROJECT NO. 4208) (STAFF CONTACT: MIKE MCNEELY, 586-3301)**

BACKGROUND: This project provided new roadway pavement, curb and gutter, sidewalk, driveway, curb ramps, concrete median islands, drainage inlets and culverts, street lighting, landscaping and irrigation and the City Council awarded the project to O'Grady Paving, Inc., on May 20, 2003. The project has been successfully completed, and staff recommends that Council grant an initial acceptance and authorizes the reduction of the contractor's faithful performance bond to 10% of the contract amount or \$ 40,745.00.

RECOMMENDATION: Adopt resolution granting initial acceptance of the project subject to a one-year warranty period and reduction of the faithful performance bond to \$40,745.00.

- * 25. **ADOPT RESOLUTION GRANTING INITIAL ACCEPTANCE: MODULAR FURNITURE FOR CITY HALL (PROJECT NO. 8026) (STAFF CONTACT: GREG ARMENDARIZ, 586-3401)**

BACKGROUND: The project construction delivery system for the City Hall was a multiple prime contractor process, where the City contracted all the elements of work with individual contractors. Corner Office provided the modular furniture, and has fulfilled all of its contract obligations including completion of all punchlist work. Staff recommends that Council grant an initial acceptance and authorize the reduction of the contractor's faithful performance bond to 10% of the contract amount or \$83,853.30. The work is subject to one-year warranty period beginning on the date of initial acceptance.

RECOMMENDATION: Adopt resolution granting initial acceptance of the project subject to a one-year warranty period and reduction of the faithful performance bond to \$83,853.30.

- * 26. **ADOPT RESOLUTION GRANTING FINAL ACCEPTANCE: 2001 STREET RESURFACING (PROJECT NO. 4182) (STAFF CONTACT: MIKE MCNEELY, 586-3301)**

BACKGROUND: This project provided street repairs, resurfacing and slurry seal, and was initially accepted by City Council, on July 1, 2003. The one-year project warranty period has passed. Staff conducted a final project inspection and has determined the work to be satisfactory. Therefore, the Council may grant final acceptance and the contractor's bond may be released.

RECOMMENDATION: Adopt resolution granting final acceptance and release of the Contractors bond.

- * 27. **ADOPT RESOLUTION GRANTING FINAL ACCEPTANCE: MCCANDLESS BOX CULVERT REPAIR (PROJECT NO. 4182A) (STAFF CONTACT: DOUG DE VRIES, 586-3313)**

BACKGROUND: This project provided repairs to the box culvert on McCandless Drive, and was initially accepted by City Council on July 1, 2003. The one-year project warranty period has passed. Staff conducted a final project inspection and has determined the work to be satisfactory. Therefore, the Council may grant final acceptance and the contractor's bond may be released.

RECOMMENDATION: Adopt resolution granting final acceptance and release of the Contractors bond.

- * 28. **ADOPT RESOLUTION GRANTING FINAL ACCEPTANCE AND RELEASE OF BONDS: CIVIC CENTER (PROJECT NO. 8026) (STAFF CONTACT: GREG ARMENDARIZ, 586-3220)**

BACKGROUND: The project construction delivery system is a multiple prime contractor process, where the City has contracted all the elements of work with individual contractors.

The following contractors completed their contract work, including punchlist and warranty work. All of the work has been inspected and approved by staff. Staff recommends Final Acceptance of these contracts and release of the bonds, which were held during the warranty period.

<u>Contractors</u>	<u>Initial Acceptance Date</u>
• A&B Painting	12/03/02
• A&D Automatic Gate	11/22/02

• Allied Fire Protection	11/05/02
• BBI Engineering	01/21/03
• B.T Mancini	11/05/02
• Cookson Rolling Doors	9/17/02
• Division Two Construction	11/19/02
• Enterprise Roofing (Roof)	12/17/02
• Enterprise Roofing (Foundation)	12/03/02
• Fetzer's	11/19/02
• Figueras Seating USA	12/03/02
• Graebel Erickson VanLines	11/05/02
• Interform Designers	08/05/03
• Ireland Interiors	12/17/02
• JJR Construction (Parking)	12/03/02
• JJR Construction (Site)	12/03/02
• Metal Air Iron Works	11/19/02
• Pacific Water Art	12/17/02
• R.L Hellwig Mechanical	11/05/02
• Rollie French (Drywall)	11/05/02
• Rollie French (Plaster)	11/05/02
• Service Metal Products	12/03/02
• Shooter & Butts	11/19/02
• Weidner Architectural Signage	12/17/02

RECOMMENDATION: Adopt resolution granting final acceptance and release of the bond for the contracts listed above in accordance with the Public Contract code.

*** 29. ADOPT RESOLUTION SETTING AUGUST 5, 2004, AS MILPITAS NATIONAL NIGHT OUT 2004 (STAFF CONTACT: GAIL BLALOCK, 586-3001)**

BACKGROUND: National Night Out, sponsored by the National Association of Town Watch, is a unique crime and drug prevention event where citizens in participating neighborhoods gather for a “block party” and other activities in order to become better acquainted and make their neighborhoods safer. The Community Advisory Commission has recommended Thursday, August 5, 2004, as the date to celebrate National Night Out in Milpitas.

RECOMMENDATION: Adopt a resolution designating Thursday, August 5, 2004, as Milpitas National Night Out 2004.

XIX. BIDS AND CONTRACTS

*** 30. APPROVE BUDGET APPROPRIATION: PIEDMONT ROAD BIKE LANE AND SIDEWALK IMPROVEMENTS AT ST. JOHN’S CEMETERY (PROJECT NO. 4214) (STAFF CONTACT: GREG ARMENDARIZ, 586-3401)**

BACKGROUND: In April 2004, the Santa Clara Valley Transportation Authority (SCVTA) agreed to grant \$41,253 of Measure B Bicycle Funds to the City for the purpose of roadway improvements to better accommodate bicyclists and pedestrians. This grant is project specific and is to be used for the subject project.

This grant requires the City to pay for the improvements first and will then be reimbursed later. This project is currently under construction and project completion is anticipated in August 2004.

RECOMMENDATION: Approve budget appropriation of \$41,253, to be refunded by SCVTA, into the Piedmont Road Bike Lane and Sidewalk Improvements at St. John’s Cemetery Project.

- * **31. APPROVE PLANS AND SPECIFICATIONS: WATER SYSTEM AIR RELIEF VALVE MODIFICATIONS - PHASE I (PROJECT NO. 7086) (STAFF CONTACT: DOUG DEVRIES, 586-3313)**

BACKGROUND: Plans and specifications for the subject project have been completed in accordance with the approved five-year Capital Improvement Program (CIP). The improvement involves retrofitting existing air relief valves throughout the City from below ground level to enclosures above ground level. These are measures intended to protect the water system in the event of a flood, in accordance with State Code, Title 22, Chapter 16, and as mandated by California Department of Health Services (DOHS). Approximately 500 sites throughout the City have been identified for retrofitting, and the work will be done in phases based on the highest priority.

The engineer's estimate for the work is approximately \$175,000. A copy of the project location map is included in the Council's agenda packets. Complete plans and specifications are available for review in the office of the City Engineer.

RECOMMENDATION:

1. Approve plans and specifications
2. Authorize advertising for construction bid proposals.

- * **32. APPROVE PLANS AND SPECIFICATIONS, AND AUTHORIZE ADVERTISEMENT FOR BID PROPOSALS: MAIN SEWAGE PUMP STATION SITE IMPROVEMENTS (PROJECT NO. 6079), WEST YOST & ASSOCIATES (STAFF CONTACT: MARK ROGGE, 586-3403)**

BACKGROUND: Plans and specifications for the first phase of subject project have been completed in accordance with the approved five-year Capital Improvement Program. The project provides for demolition, clean up and site improvements at the City's main sewage pump station site at 1425 North McCarthy Boulevard. Work will be constructed in two phases. The first phase work includes removal of abandoned sewage treatment facilities and the old operations building; remediation of hazardous matter such as asbestos-containing material; drainage improvements; interim paving; and related site improvements. A second phase, scheduled for next year, will include a new operations building and additional site improvements. Design of the first phase has been completed and is ready to bid. Sufficient funds are available in the project budget. A copy of the project plan title sheet is included in the Council's agenda packets. Complete plans and specifications are available for review in the office of the City Engineer.

RECOMMENDATION:

1. Approve plans and specifications.
2. Authorize advertising for bid proposals.

- * **33. APPROVE PROVISION OF ADDITIONAL SERVICES TO THE CENTRAL CONTRA COSTA SANITARY DISTRICT (STAFF CONTACT: BILL MARION, 586-2701)**

BACKGROUND: In January of 2004, Council approved an agreement with the Central Contra Costa Sanitary District to allow the City to sell Geographic Information Services to the District for a price of \$15,000. The scope of work for the original agreement has been completed and the District has requested that the City perform additional services in an increased amount of \$5,000. Provision of these additional services will require an amendment to the original contract.

RECOMMENDATION: Authorize the City Manager to execute an amendment to the agreement with the Central Contra Costa Sanitary District for technical consulting services, subject to approval as to form by the City Attorney.

- * **34. AUTHORIZE THE CITY MANAGER TO EXECUTE THE COST SHARING AGREEMENT: VALLEY TRANSPORTATION AUTHORITY (VTA), 237/I-880**

INTERCHANGE PROJECT (PROJECT NO. 4170) (STAFF CONTACT: MIKE MCNEELY, 586-3301)

BACKGROUND: As a result of the construction activities of 237/I-880 interchange project, the pavement along Calaveras Boulevard just east of I-880 has significantly deteriorated. This area includes both the westbound and eastbound lanes of Calaveras Blvd. between I-880 and Abbott Avenue. Staff has negotiated with Valley Transportation Authority a 50% cost sharing with a not-to-exceed VTA share of \$62,500. As the 237/I-880 interchange project is nearing completion, an agreement (currently being prepared) should be executed so that the pavement improvement work can be incorporated with VTA's 237/I-880 Interchange completion schedule.

Approval is requested to authorize execution of a cost sharing agreement with VTA with a not-to-exceed amount of \$75,000 (the \$62,500 estimated cost plus \$12,500 for contingencies). There are sufficient funds in the project budget to cover these costs.

RECOMMENDATION: Authorize the City Manager to enter into a cost share agreement with Valley Transportation Authority (VTA), in a not-to-exceed amount of \$75,000.00, subject to approval as to form by the City Attorney.

*** 35. APPROVE AGREEMENT AMENDMENT: OLIVIA CHEN CONSULTANTS, OAKCREEK PUMP STATION (PROJECT NO. 8140) (STAFF CONTACT: GREG ARMENDARIZ, 586-3401)**

BACKGROUND: On December 16, 2003, City Council awarded a consultant contract to Olivia Chen Consultants to perform a station evaluation and develop plans and specifications for the station engine replacement and station improvements. Staff recommends that Olivia Chen Consultants perform additional services to perform a physical model study of the pump station. A scale model of the stations sump and pumps will be constructed and several different configuration tested. The data collected from the model study will be used to determine the types of improvements that are needed to make the station operate properly and more efficiently. The fee associated with these services is estimated not to exceed \$62,140.00, which is considered reasonable for the scope of work. There are sufficient funds in the project budget to cover this additional expense.

RECOMMENDATION: Authorize the City Manager to execute an amendment to the agreement with Olivia Chen Consultants in the amount of \$62,140.00, subject to approval as to form by the City Attorney.

*** 36. APPROVE AGREEMENT AMENDMENT: CAMP DRESSER & MCKEE FOR PROFESSIONAL ENGINEERING SERVICES SUPPORTING THE SOLID WASTE PROGRAM (STAFF CONTACT: DARRYL WONG, 586-3345)**

BACKGROUND: The Federal Resource Conservation and Recovery Act, subtitle D, requires landfill operators to monitor landfill safety, provide proper drainage of wastewater, monitor wildlife control and facility design. Per the Solid Waste Agreement with the City, and BFI is entitled to recover extraordinary costs that are the result of regulatory activity. BFI has submitted charges for 2001 and 2002 Subtitle D improvements.

Staff is requesting independent review of proposed charges to verify accuracy of the costs. Council approved a professional services agreement and an amendment #1 with Camp Dresser & McKee (CDM) for review of Subtitle D charges for previous years. CDM is reviewing the 2001 and 2002 Subtitle D improvements currently for San Jose.

Considering CDM's satisfactory experience with the City, and their current review of the 2001 and 2002 improvements for San Jose, which minimizes learning curve costs, staff recommends continuing with that firm for the independent review. Staff has negotiated an agreement for

additional services at a not-to-exceed fee of \$12,000. Sufficient funding has been allocated in the Engineering budget for these services.

RECOMMENDATION: Authorize the City Manager to execute the consultant agreement amendment for additional services for \$12,000, bringing the total not-to-exceed amount to \$50,000 with Camp Dresser & McKee, subject to approval as to form by the City Attorney.

- * **37. AUTHORIZE CITY MANAGER TO EXECUTE AGREEMENT AMENDMENT: JMH WEISS, INC., SENIOR HOUSING PROJECT (PROJECT NO. 8103) (STAFF CONTACT: MARK ROGGE, 586-3403)**

BACKGROUND: On March 25, 2004, the City Council awarded a consultant contract to JMH Weiss, Inc. to provide base mapping, utility mapping, and to design street improvements on Abel street from Weller lane to Great Mall Parkway to address the appropriate upgrades and additions required to create a boulevard corridor on Abel.

Staff now recommends that JMH Weiss perform additional surveys services on the parcel(s) along the west side of Main Street (APN 22-8-41, 22-8-42, 22-8-3) proposed as the location of the new Senior Housing facility (CIP #8103). An agreement amendment is proposed for these additional services, and Staff has negotiated a fee for these services not to exceed \$20,000, which is considered reasonable for the work.

RECOMMENDATION: Authorize the City Manager to execute the agreement amendment with JMH Weiss, Inc., in the amount of \$20,000, subject to approval as to form by the City Attorney.

- * **38. AWARD CONSTRUCTION CONTRACT: PAVEMENT IMPROVEMENT PROGRAM, (PROJECT NO. 4182) (STAFF CONTACT: GREG ARMENDARIZ, 586-3401)**

BACKGROUND: On June 1, 2004, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals. This project provides roadway reconstruction on Milmont Drive between Dixon Landing and northern City limits, Falcato Drive between Yosemite and Edsel, Yosemite Drive between Temple and Sequoia, asphalt concrete overlay on South Park Victoria Drive between Big Basin and Landess, McCarthy between Murphy Ranch and Bellew, Bellew Drive between McCarthy and Barber, Barber Lane between Alder and Bellew, Jacklin Road between Park Victoria and I-680 Ramp East, Landess Avenue between Park Victoria and Dempsey, and slurry seal on Jacklin Road between Milpitas and I-680 Ramp West, Barber Court, Petersburg Drive, Bliss Avenue, Mesa Verde Drive, Shiloh Avenue and Seacliff Drive. The Engineer's estimated construction cost was \$1,753,000.00.

The project was advertised and sealed bid proposals were opened on June 28, 2004. The bid proposals ranged from \$1,325,000.00 to \$1,678,000.00, and staff recommends the lowest responsible bidder, C.F. Archibald Paving, Inc.

Sufficient funds are available in the project budget to award this project.

RECOMMENDATION: Award Construction Contract to C.F. Archibald Paving, Inc. in the amount of \$1,325,139.50.

- * **39. APPROVE PAYMENT TO THE MILPITAS UNIFIED SCHOOL DISTRICT FOR RENTAL OF THE MILPITAS HIGH SCHOOL POOLS FOR THE 2004-2005 SUMMER PROGRAM (STAFF CONTACT: AARON BUENO, 586-3226)**

BACKGROUND: Recreation Services rents and utilizes the Milpitas High School pools from July 1, 2004, through August 15, 2004, for swim lessons, Milpitas Tidal Waves swim team practice, Water Polo Camp, and S.C.U.B.A. certification classes.

Over the course of the summer, the pools are utilized 47 days. Approval of payment is requested to the Milpitas Unified School District for the 2004 summer pool rental; in an amount not-to-exceed \$8,000. Funds have been approved and appropriated in the Recreation Services Department operating budget.

RECOMMENDATION: Approve payment to the Milpitas Unified School District, in the amount not-to-exceed \$8,000.00, for rental of the Milpitas High School pools for the 2004-2005 summer season.

*** 40. REVIEW AND APPROVE AMENDMENT NO. 2 TO CONSULTING SERVICES AGREEMENT BETWEEN CITY OF MILPITAS AND DR. THOMAS SHANKS CONSULTING TO COMPLETE ETHICS PROJECT IMPLEMENTATION MEASURES. (STAFF CONTACT: TAMBRI HEYDEN, 586-3280)**

BACKGROUND: At the June 1, 2004 Council meeting, the Council adopted the Ethics Code, Behavioral Standards and the Implementation Plan for the City of Milpitas Ethics Code. The implementation plan contained 14 implementation measures. Preparation and completion of six of the 14 measures are provided for in the original contract with Dr. Shanks as they are customary components of an ethics project implementation program – training, a post-election assessment session and a campaign funding program. However, the remaining eight measures were identified over the past five months since the beginning of the ethics project in January of this year to meet the City's specific needs. These measures include: a) preparing materials to assist in conducting moments of reflection at Council, senior staff and Commission meetings, b) designing a recognition event and team, c) securing partners to hold candidates accountable, d) making contacts and materials to discourage use of County Ethics Foundation, e) organizing an ad watch and candidate town hall/debate, f) preparing a public information campaign, g) developing a lobbyist registry process and ordinance, and h) developing a complaint process and ordinance.

During the June 1st Council discussion, the Council requested staff to come back to the Council with a budget request to complete the implementation measures as quickly as possible. For this purpose, the proposed Amendment No. 2 to the Consulting Services Agreement between the City and Dr. Thomas Shanks Consulting has been prepared and included in the Council's agenda materials. Work will need to begin immediately to positively affect the November election and all tasks will be completed by the end date of the original contract – January 30, 2005.

The cost of the tasks under this contract amendment is an amount not to exceed \$41,500, to be funded by contingency reserves bringing the total ethics project cost to \$66,760. This cost does not cover advertising, copying and mailings related to the implementation tasks estimated at \$3,000 and already part of the Planning and Neighborhood Services Department FY 04-05 budget. It also does not include the services of the complaint process team of ethics evaluators – an unknown cost at this time.

RECOMMENDATION: Review and approve Amendment No. 2 to the Consulting Services Agreement Between City of Milpitas and Dr. Thomas Shanks Consulting to complete the ethics project implementation measures at a cost not to exceed \$41,500 to be funded by contingency reserve.

*** 41. APPROVE "AS NEEDED" TRANSPORTATION PLANNING SERVICES (STAFF CONTACT: JOE OLIVA, 586-3290)**

BACKGROUND: In June 2004, the City Council approved the Transportation Planning Budget which included \$35,000 for a consultant to provide "As Needed" Transportation Planning Services on an on call basis. Fehr and Peers Associates have been under contract during the 2003-2004 fiscal year as the "as needed" Transportation Planning consultant. Staff is seeking

to extend the contract for an additional year to complete tasks under way at this time and mentioned below.

Fehr and Peers Associates has installed Transportation Modeling software and is conducting training for Transportation Planning staff to implement the new Santa Clara County Travel Demand Forecast Model. Fehr and Peers staff will continue to train staff and provide technical support for the Travel Forecast Model implementation. This consultant has been assisting the City on the Milpitas Library EIR and is currently preparing studies for the North Main Street EIR.

Historically, the City has rotated the “As Needed” Transportation Planning Services contract between Fehr and Peers Associates, Hexagon Transportation Consultants and CCS Planning and Engineering. Following the rotation, Hexagon Transportation Consultants would be recommended for fiscal year 2005-2006.

RECOMMENDATION: Authorize the City Manager to execute a contract with Fehr and Peers Associates, in the amount of \$35,000, for the “As Needed” Transportation Planning Services for the 2004-2005 fiscal year.

XX. CLAIMS AND DEMANDS

*** 42. APPROVE PAYMENT REQUESTS: MISCELLANEOUS VENDORS / CONTRACTORS (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$6,000.00 to Clayton Jones for annual property rental of the Police firing range and training center for the Police Department. (Funds are available from the Police Department operating budget for this service.)
2. \$5,800.00 to Hdl Software, LLC for annual software maintenance and support fees for the Finance business license computer system for the Information Services Department. (Funds are available from the Information Services Department operating budget for this service.)
3. \$6,980.00 to Balch Petroleum Contractors & Builders, Inc. for upgrading the Corporation Yard underground fuel storage tanks with new vapor recovery system equipment in order to comply with California Air Resources Board regulations. (Funds are available from the Public Works Department operating budget for this service.)
4. \$5,500.00 to DMG Maximus for preparation of the draft and final annual State Controller’s Report and annual Street Report for the Finance Department. (Funds are available from the Finance Department operating budget for this service.)
5. \$7,512.01 to Dictaphone Corp. for annual maintenance and support fees for the 911 call logger/recorder system for the Police Department dispatch center. (Funds are available from the Police Department operating budget for this service.)
6. \$5,729.00 to Industrial Door Service for emergency replacement of a rollup door operator mechanism on the east (exit door) door of the police garage for the Police Department. (Funds are available from the Police Department operating budget for this emergency repair.)

RECOMMENDATION: Approve the purchase requests.

XXI. ADJOURNMENT

NO MEETING JULY 20, 2004
NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, AUGUST 3, 2004, AT 7:00 P.M.

NOTICE OF ADJOURNMENT

Regular Meeting of Milpitas City Council

And Milpitas Redevelopment Agency



Notice is hereby given that pursuant to Government Code Section 54955, the June 15, 2004, regular meetings of the City Council of the City of Milpitas and the Milpitas Redevelopment Agency have been adjourned to 7:00 p.m., Wednesday, the 16th day of June, 2004, in the Council Chambers at City Hall, 455 E. Calaveras Blvd, Milpitas, California.

By order of adjournment of the City Council and Redevelopment Agency made at the meetings of June 15, 2004, by Motion of Councilmember Polanski, seconded by Vice Mayor Dixon, with all members present and voting in the affirmative.

Dated: June 15, 2004

Gail Blalock, City Clerk

CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
June 15, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

- 1. CONFERENCE WITH LABOR NEGOTIATOR**
(Pursuant to Government Code Section 54957.6)
Agency Negotiator: Thomas J. Wilson, City Manager
Employee Organization: Unrepresented Employees
- 2. CONFERENCE WITH LABOR NEGOTIATOR**
(Pursuant to Government Code Section 54957.6)
Agency Negotiator: Eddie Kreisberg
Employee Organization: LIUNA

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES: May 11, 2004, and June 1, 2004

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

Commendations:

- Nancy Rupp, Milpitas Library Retiree
- Martha Kruger, Milpitas Library Retiree
- Linda Noble, Milpitas Library Retiree

Proclamations:

- Relay for Life, June 25-26
- Amateur Radio Week, June 20-27
- Milpitas Neighborhood Night Out, August 5
- St. Joseph Assembly, 4th degree membership of the Knights of Columbus, for patriotic activities in presentation of American and California flags to Sinnott Elementary School

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. APPROVAL OF AGENDA

XI. CONSENT CALENDAR (Items with Asterisks)

XII. PUBLIC HEARINGS

- 1. Approve a One-Time, Eighteen-Month (18) Time Extension For a Single-Family House, Planned Unit Development Approval at 1000 Country Club Drive (APN: 029-03-014), Applicant: Norm LaCroix (Staff Contact: Troy Fujimoto, 586-3287)**
- 2. Continue the Amended Density Bonus, “S” Zone Approval Amendment No. SA2004-7 and Use Permit Amendment No. UA2004-2 for Apton Plaza – 230 North Main Street (Staff Contact: Staci Pereira, 586-3278)**
- 3. Adopt Resolution Approving the Annual Engineer’s Report and the Levying of Assessments for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch, Program No. 9474. (Staff Contact: Mehdi Khaila, 586-3328)**
- 4. Adopt Resolution Approving the Annual Engineer’s Report and the Levying of Assessments for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon, Program No. 9489, (Staff Contact: Mehdi Khaila, 586-3328).**

XIII. UNFINISHED BUSINESS

- 5. Consideration of Proposed Standard Operating Procedure/ Protocol Setting Forth Procedures and Policies for Making City Records Available to the Public and Providing Notice and Access to Public Meetings (Staff Contact: Steve Mattas, 586-3040)**
- 6. Consideration of Development of a City Council Handbook including the Topics that the City Council May Desire to Include in the Handbook (Staff Contact: Steve Mattas, 586-3040)**
- 7. Consideration of Salary Adjustments for Unrepresented Employees (Staff Contact: Thomas J. Wilson, 586-3050)**
- 8. Set Special Meeting Dates to Hold the Two-Session Ethics Code Training for the Council (Staff Contact: Tambri Heyden, 586-3280)**
- * 9. Odor Control Comprehensive Action Plan Update and Authorize City Manager to Execute Agreement Amendment: CalRecovery, Inc. (Staff Contact: Darryl Wong, 586-3345)**

XIV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF AGENDA

RA4. APPROVAL OF MINUTES: May 11, 2004, and June 1, 2004

RA5. AGENCY ADJOURNMENT

XV. REPORTS OF OFFICERS AND BOARDS

City Council

- * 10. Approve the Mayor's Appointments and Reappointments to the Bicycle Transportation, Citizens Emergency Preparedness Advisory, Library Advisory, Parks, Recreation, and Cultural Resources, and Senior Advisory Commissions: Mayor Esteves
- * 11. Approve Letters Supporting Legislation Regarding Proposition 42: Vice Mayor Dixon (Staff Contact: Cindy Maxwell, 586-3282)

Arts Commission

- * 12. Review and Approve the Arts Commission's Revised Work Plan (Staff Contact: Kathleen Yurchak, 586-3209)

Sister Cities Commission

- * 13. Approve Request from the Sister Cities Commission for Services Supporting 2004 Tsukuba City Cultural Exchange Visit (Staff Contact: Leslie Stobbe, 586-3352)

XVI. NEW BUSINESS

- 14. Summary Presentation of Proposed Re-Calculated Fee Schedule (Staff Contact: Edgar Rodriguez, 586-3248)
- * 15. Deny Marquee Request: Mario Rivera, Wellspring Community Church (Staff Contact: Renee Lorentzen, 586-3214)
- * 16. Approve One (1) Organizational Youth Sports Assistance Fund Grant Request (Staff Contact: Kerrilyn Ely, 586-3231)
- * 16A. Approve Filling Vacant Positions: Maintenance Worker III, Deputy City Clerk, Word Processing Operator, Add a Building Permit Technician, and Delete an Office Specialist (Staff Contact: Cherie Rosenquist 586-3082)

XVII. ORDINANCES (NONE)

XVIII. RESOLUTIONS

- * 17. Adopt a Resolution Calling a Municipal Election and Requesting Consolidation: November 2, 2004 (Staff Contact: Gail Blalock, 586-3001)
- * 18. Resolution Granting Partial Initial Acceptance and Partial Acceptance Agreement: Parc Metropolitan (Project Number No. 3061) (Staff Contact: Robert Wang 586-3327)
- * 19. Adopt Resolution Granting Initial Acceptance: Veritas Phase I Improvements (Project No. 3123) (Staff Contact: Mehdi Khaila, 586-3328)

XIX. BIDS AND CONTRACTS

- * 20. Approve Contract Renewal for Excess Workers' Compensation Insurance (Staff Contact: Cheri Rosenquist, 586-3082)
- * 21. Approve an Amendment to Extend the Agreement with Triaxial Data Systems and Perform Additional Programming Services for an Amount Not to Exceed \$10,000 (Project No. 8110) (Staff Contact: Terry Medina, 586-2703)

- * 22. **Approve an Agreement with Telecommunications Engineering Associates for Installation of a Fire Station Alerting System (Staff Contact: Bill Marion, 586-2701)**
- * 23. **Approve Renewal of Annual Software Support and Maintenance Fees with Various Vendors through June 30, 2005 (Staff Contact: Terry Medina, 586-2703)**
- * 24. **Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals: Abel/Calaveras Right Turn Lane (Project No. 4186) Korve Engineering (Staff Contact: Greg Armendariz, 586-3401)**
- * 25. **Approve Plans and Specifications and Authorize Advertisement for Bid Proposals: Great Mall and Tasman/1880 Capacity Improvements (Project No. 4178), Korve Engineering (Staff Contact: Greg Armendariz, 586-3401)**
- * 26. **Approve Consultant Agreement: Design - Olivia Chen Consultants - City Reservoir Evaluation and Upgrades (Project No. 7091) (Staff Contact: Doug DeVries, 586-3313)**
- * 27. **Authorize City Manager to Execute Agreement Amendment: Mark Thomas & Co., Inc., 237/I-880 Interchange (Project No. 4170) (Staff Contact: Doug DeVries, 586-3313)**
- * 28. **Authorize City Manager to Execute Agreement Amendment: HMM Incorporated, Montague Widening Project (Project No. 4179) (Staff Contact: Greg Armendariz, 586-3401)**
- * 29. **Authorize the City Manager to Execute Amendment No. 8 with the City of San Jose for South Bay Water Recycling In-Kind Services (Staff Contact: Darryl Wong, 586-3345)**
- * 30. **Approve Contract Between the City of Milpitas and New Orient Restaurant for the Senior Nutrition Program (Staff Contact: Kathleen Yurchak, 586-3209)**
- * 31. **Authorize Purchase of Radio Modems (Staff Contact: Bill Marion, 586-2701)**
- * 32. **Award of Bid for the Purchase of Fire Station Alerting Equipment (Project No. 3389) (Staff Contact: Lou Zenzen, 586-3161)**

XX. CLAIMS AND DEMANDS

- * 33. **Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Lou Zenzen, 586-3161)**

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, JULY 6, AT 7:00 P.M.**

**CITY OF MILPITAS
Agenda Reports
Milpitas City Council Meeting
June 15, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard**

XII. PUBLIC HEARINGS

1. APPROVE A ONE-TIME, EIGHTEEN-MONTH (18) TIME EXTENSION FOR A SINGLE-FAMILY HOUSE, PLANNED UNIT DEVELOPMENT APPROVAL AT 1000 COUNTRY CLUB DRIVE (APN: 029-03-014), APPLICANT: NORM LACROIX (STAFF CONTACT: TROY FUJIMOTO, 586-3287)

BACKGROUND: At its May 26, 2004, meeting, the Planning Commission recommended the City Council approve a one-time, eighteen-month time extension (TE2004-2) for a hillside single-family home, subject to fifteen special conditions. The approximate 12,500 square foot single family home will be built on a 4.6-acre site zoned R1-H, Single Family Hillside, located near the Summitpointe golf course. The site is currently occupied by a single-family home that will be razed.

The new single family home will be a two story building with an “L” shaped footprint. The first floor will be partially below ground, and will include an attached garage and pool area. Since the original approval, the applicant has incorporated minor modifications to comply with conditions of approval, including a relocated building footprint to be in conformance with setbacks, a building color change, the addition of exterior stone work, new fencing, a revised fire truck turnaround area and new exterior stairs. Given the complexity of the proposed construction and the numerous conditions that need to be addressed prior to obtaining a building permit, staff and the Planning Commission concluded the time extension is justified. Additional information about the project is provided in the plans included in the Council’s agenda packet.

RECOMMENDATION:

1. Close the public hearing.
2. Approve the request for an 18-month time extension (P-TE2004-2) (to expire on December 15, 2005) for the Planned Unit Development approval for the single-family home, based on the findings and special conditions contained in the Council’s agenda packet.

2. CONTINUE THE AMENDED DENSITY BONUS, “S” ZONE APPROVAL AMENDMENT NO. SA2004-7 AND USE PERMIT AMENDMENT NO. UA2004-2 FOR APTON PLAZA – 230 NORTH MAIN STREET (STAFF CONTACT: STACI PEREIRA, 586-3278)

BACKGROUND: The applicant is requesting a continuance in order to allow additional time to review and consider staff’s recommended Conditions of Approval. This continuance should provide the applicant with sufficient time to complete his review in time for the City Council hearing on July 6, 2004.

RECOMMENDATION:

1. Open the public hearing.
2. Continue the public hearing and the review of the amended Density Bonus, “S” Zone Approval Amendment No. SA2004-7 and Use Permit Amendment No. UA2004-2 to July 6, 2004.

3. ADOPT RESOLUTION APPROVING THE ANNUAL ENGINEER'S REPORT AND THE LEVYING OF ASSESSMENTS FOR LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 95-1, MCCARTHY RANCH, PROGRAM NO. 9474 (STAFF CONTACT: MEHDI KHAILA, 586-3328)

BACKGROUND: On June 1, 2004, the City Council adopted Resolution of Intention No. 7418 to levy annual assessments for the Landscaping and Lighting Maintenance Assessment District No. 95-1. District provides for the servicing and maintaining the public landscaping and additional lighting along North McCarthy Boulevard and the Gateway feature on Ranch Drive. An annual public hearing is necessary to adopt the Annual Engineer's Report to provide funds for the district.

The total assessment for the district in the Annual Engineer's Report is \$252,226 for the 2004-2005 fiscal year. This amount is the same as the 2003-2004 total assessment, except for the addition of \$12,844 for recently completed landscaping improvements and application of the annual Consumer Price Index (CPI) escalation factor.

RECOMMENDATION:

1. Open the public hearing, receive any written protests, and hear testimony.
2. Close the public hearing.
3. Adopt Resolution approving Annual Engineer's Report, Confirm Diagram and assessment and ordering levy of assessments for fiscal year 2004-2005, for Landscaping and Lighting Maintenance Assessment District No. 95-1.

4. ADOPT RESOLUTION APPROVING THE ANNUAL ENGINEER'S REPORT AND THE LEVYING OF ASSESSMENTS FOR LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT NO. 98-1, SINCLAIR HORIZON, PROGRAM NO. 9489, (STAFF CONTACT: MEHDI KHAILA, 586-3328).

BACKGROUND: On June 1, 2004, the City Council adopted Resolution of Intention No. 7419 to levy annual assessments for the Landscaping and Lighting Maintenance Assessment District No. 98-1. The District provides for servicing and maintaining the public landscaping along Sinclair Frontage Road, Los Coches Creek and Berryessa Creek abutting the Sinclair Horizon residential subdivision. An annual public hearing is necessary to adopt the Annual Engineer's Report to provide funds for the district.

The total assessment for the district in the Annual Engineer's Report is \$31,769.64 for the 2004-2005 fiscal year. This amount is the same as the 2003-2004 total assessment except for the application of the approved annual Consumer Price Index (CPI) escalation factor.

RECOMMENDATION:

1. Open the public hearing, receive any written protests, and hear testimony.
2. Close the public hearing.
3. Adopt Resolution approving Annual Engineer's Report, Confirm Diagram and assessment and ordering levy of assessments for fiscal year 2004-2005, for Landscaping and Lighting Maintenance Assessment District No. 98-1.

XIII. UNFINISHED BUSINESS

5. CONSIDERATION OF PROPOSED STANDARD OPERATING PROCEDURE/ PROTOCOL SETTING FORTH PROCEDURES AND POLICIES FOR MAKING CITY RECORDS AVAILABLE TO THE PUBLIC AND PROVIDING NOTICE AND ACCESS TO PUBLIC MEETINGS (STAFF CONTACT: STEVE MATTAS, 586-3040)

BACKGROUND: At the City Council meeting on March 16, 2004, Councilmember Gomez asked the City Council to consider adopting a Statement of Policy and General Rules to guide the

City Attorney in the development of a protocol for public access to meetings and for the disclosure of public records. During the meeting, the City Council discussed the issue and provided the City Attorney with direction to 1) collect and assemble comparative data on other Bay Area jurisdictions that have adopted similar policies or ordinances; 2) to come up with some hypothetical situations to illustrate what impacts the policy might have on the City and the Council's deliberative process; and 3) to draft a model policy based on Councilmember's Gomez' proposed Statement of Policy and General Rules.

The attached packets contain four documents. The first consists of a brief description of existing state law governing the release of public records and access to meetings of local legislative bodies under the California Public Records Act, the Ralph M. Brown Act, and other relevant state and federal laws, including an analysis of points where the proposed policy would provide greater access to meetings and records than is provided for under existing law. The second document is a brief memorandum presenting hypothetical situations to illustrate how the proposed policy might impact the City and deliberative processes of the Council. The third is a matrix presenting comparative data on Bay Area jurisdictions. The fourth is a model policy based on Councilmember Gomez' proposed Statement of Policy and General Rules.

RECOMMENDATION: Consider the information provided and then provide direction to staff as to how the Council desires to proceed.

6. CONSIDERATION OF DEVELOPMENT OF A CITY COUNCIL HANDBOOK INCLUDING THE TOPICS THAT THE CITY COUNCIL MAY DESIRE TO INCLUDE IN THE HANDBOOK (STAFF CONTACT: STEVE MATTAS, 586-3040)

BACKGROUND: At the March 16, 2004, City Council meeting, the City Council requested that staff provide the City Council with examples of City Council Handbooks used in other communities. Although each handbook differs in some respects, a City Council Handbook or Guide generally contains information that councilmembers, especially new councilmembers and the public, find helpful in understanding various issues associated with the role of a city councilmember. To date, my staff has located examples from other cities including San Leandro, South San Francisco, Petaluma and Fresno and other cities within Santa Clara County including Santa Clara, Mountain View, Los Altos and Los Gatos. As these documents tend to be lengthy, we will, under separate cover, provide copies for the City Council to review and will also provide a public review binder which will be available through the City Clerk's office.

RECOMMENDATION: Consider the sample documents provided and if desired by the City Council, provide direction to develop a City Council handbook for use in Milpitas.

7. CONSIDERATION OF SALARY ADJUSTMENTS FOR UNREPRESENTED EMPLOYEES (STAFF CONTACT: THOMAS J. WILSON, 586-3050)

BACKGROUND: This item, to consider salary adjustments for unrepresented employees, has been placed on the agenda following direction from the City Council at the May 11, 2004, Budget Hearing. As appropriate, further information will be provided in an oral presentation at the City Council meeting.

RECOMMENDATION: Consider salary adjustments for unrepresentative employees and direct staff accordingly.

8. SET SPECIAL MEETING DATES TO HOLD THE TWO-SESSION ETHICS CODE TRAINING FOR THE COUNCIL (STAFF CONTACT: TAMBRI HEYDEN, 586-3280)

BACKGROUND: At the June 1, 2004, Council meeting, it was requested that staff return with alternative dates to hold special meetings of the City Council for the purpose of ethics code training of the Council members. The ethics code training for the Council is a two-part series to take place in August and November of this year. For the August meeting session, the dates of

Monday, August 2 or Thursday, August 5 are suggested. It should be noted that the City's Parks, Recreation & Cultural Commission meets on August 2 at 7:00 p.m.

For the November meeting session, Wednesday, November 17 or Tuesday, November 23 are suggested. It should be noted that the MUSD School Board meets at 7:00 p.m. on November 23. Both the August and November meetings would begin at 6:30 p.m. and be two hours in length.

RECOMMENDATION: Consider August 2 or 5 at 6:30 p.m. and November 17 or 23 at 6:30 p.m. as special meeting dates to hold the two-session ethics code training for the Council.

* **9. ODOR CONTROL COMPREHENSIVE ACTION PLAN UPDATE AND AUTHORIZE CITY MANAGER TO EXECUTE AGREEMENT AMENDMENT: CALRECOVERY, INC. (STAFF CONTACT: DARRYL WONG, 586-3345)**

BACKGROUND: This is an update of the odor control coordination activities. Some of the key events that have occurred during the past month include:

1. The San Jose Local Enforcement Agency, with CalRecovery accompanying as an observer, completed a site visit to BFI to perform a routine inspection.
2. City Staff has also received meteorological records from the S.J./SC Water Pollution Control Plant.

The Bay Area Air Quality Management District (BAAQMD) has reported the following number of complaints logged in October: 96, November: 50, December: 16, January: 31, February: 11, March: 23, April: 23, May: 13.

Staff also recommends that CalRecovery, Inc. perform additional services including collection and analysis of meteorological data and potentially malodorous materials, conduct testing of odor additives, and preparation of a contingency plan. Staff has negotiated a scope and fee for these services not to exceed \$20,000, which is considered reasonable for the work. There are sufficient funds in the Engineering operating budget to cover this additional expense.

RECOMMENDATION:

1. Note receipt and file progress report.
2. Authorize the City Manager to execute the agreement amendment with Cal Recovery Inc., in an amount not to exceed of \$24,500.00, subject to approval as to form by the City Attorney.

XIV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF AGENDA

RA4. APPROVAL OF MINUTES: May 11, 2004, and June 1, 2004

RA5. AGENCY ADJOURNMENT

XV. REPORTS OF OFFICERS AND BOARDS

City Council

* **10. APPROVE THE MAYOR'S APPOINTMENTS AND REAPPOINTMENTS TO THE BICYCLE TRANSPORTATION, CITIZENS EMERGENCY PREPAREDNESS**

ADVISORY, LIBRARY ADVISORY, PARKS, RECREATION, AND CULTURAL RESOURCES, AND SENIOR ADVISORY COMMISSIONS: MAYOR ESTEVES

BACKGROUND: Mayor Esteves is recommending the following appointments and reappointments to City commissions:

Bicycle Transportation Advisory Commission

Move Nawal Stanojevic from Alternate 1 to a regular member for a term expiring August 2005; move Miljon Buquing from Alternate 2 to Alternate 1 for a term expiring August 2004; and appoint Kayci Nguyen to Alternate 2 for a term expiring August 2005.

Citizens Emergency Preparedness Advisory Commission

Reappoint Annell Spencer and Teresa Chaves to new three-year terms expiring June 2007.

Library Advisory Commission

Reappoint Marilyn Hay, Diane Davis, Margie Stephens, and Trinidad Aoalin to new two-year terms expiring June 2006.

Parks, Recreation, and Cultural Arts Commission

Reappoint Edward Tuason to a new three-year term expiring June 2007; move Judi Leonard from Alternate 1 to the vacancy created by Neil MacKenzie not seeking reappointment, for a term expiring June 2007; and move Kathryn Gray from Alternate 2 to Alternate 1 for a term expiring June 2005.

Senior Advisory Commission

Confirm the election of Ed Connor and Milo Larsen as Members at Large elected to terms expiring December 2005.

Copies of applications for all new appointments are included in the Council's agenda packets.

RECOMMENDATION: Approve the Mayor's appointments and reappointments to Commissions.

*** 11. APPROVE LETTERS SUPPORTING LEGISLATION REGARDING PROPOSITION 42: VICE MAYOR DIXON (STAFF CONTACT: CINDY MAXWELL, 586-3282)**

BACKGROUND: Vice Mayor Dixon asks the City Council to consider formally supporting four proposed constitutional amendments to make it more difficult for the Legislature to suspend or borrow money for transportation projects. Specifically, the proposed amendments would strengthen and stabilize Proposition 42, which was approved by voters in March 2002. Proposition 42 made the sales tax on gasoline a permanent funding source for transportation. Last year the Governor and Legislature partially suspended Proposition 42 and propose to fully suspend it for FY 2005 to assist with the State's fiscal emergency.

The bills - ACA 21 (Bogh), ACA 24 (Dutra), ACA 29 (Harman) and SCA 20 (Torlakson) - call to amend the California Constitution to make it harder or impossible for the Governor and Legislature to suspend Proposition 42 (i.e., changing the Legislature's voting requirement) and makes it more difficult for the Legislature to authorize loans from the Transportation Improvement Fund (TIF). The TIF is a list of 149 transportation projects – including the BART extension – that former Governor Davis authorized funds for in 2000 and is funded by gas tax funds.

Draft support letters and the Santa Clara Valley Transportation Agency (VTA) analysis of the proposed constitutional amendments are included with the Council's mailed agenda packet.

RECOMMENDATION: Authorize the Mayor to sign letters of support for ACA 21 (Bogh), ACA 24 (Dutra), ACA 29 (Harman) and SCA 20 (Torlakson).

Arts Commission

* 12. **REVIEW AND APPROVE THE ARTS COMMISSION'S REVISED WORK PLAN (STAFF CONTACT: KATHLEEN YURCHAK, 586-3209)**

BACKGROUND: At the May 24, 2004, Arts Commission meeting, the Commission updated their Work Plan and added item #5 under Short-term Goals. The Commission will research and present to the City Council a proposal to consider adding a percentage allocation for the arts from developer fees. Below is the updated Work Plan for the Council's review and approval.

Work Plan

Pursuant to the Arts Commission (AC) Bylaws, the Arts Commission serves as an advisory body to the City Council on matters pertaining to the arts. Council directive was for the Arts Commission to develop a work plan, defining the short-term and long-term goals and on going projects.

Short-term Goals

1. Arts Day Milpitas: host 3rd Annual Arts Day celebration; expand event to all ages and community members and to incorporate additional events and activities.
2. Acquisition of Public Art: continue encouragement, recommendation and participation in the acquisition and placement of public Art in Milpitas.
3. Milpitas Global Village Faire: participate in the Milpitas Global Village Faire with an information table and/or activity table, to promote awareness of the Arts in Milpitas.
4. Recognition of Arts contributors at Arts Commission meetings: recognize established as well as up and coming artists who live in Milpitas or offer arts opportunities in the Milpitas community.
5. *Research and present to City Council a proposal to consider adding a percentage allocation for the arts from developer fees.

Long-term Goals

1. The Arts Commission will strive to continue to improve the quality of arts programs in Milpitas by expanding arts activities and opportunities to include but not limited to:
 - 2nd Phantom Art Gallery Site
 - Cultural Arts Postcard
 - Programming of Literature, Film, Performance Art, Voice, Photography
2. The Arts Commission will work towards, fundraising and arts partnerships, with City assistance:
 - Acquisition of performance space
 - Arts awareness throughout the community

Recurring Annual Tasks

1. Encouraging Art Partnerships in Milpitas
2. Cultural Arts Support Program (June)
3. Phantom Art Gallery (as applied)
4. Arts Day
5. Community Center Bulletin Board Display
6. Special Events - Arts Activities

* Item added at the May 24, 2004, Arts Commission meeting.

RECOMMENDATION: Approve the Arts Commission's revised Work Plan

Sister Cities Commission

* **13. APPROVE REQUEST FROM THE SISTER CITIES COMMISSION FOR SERVICES SUPPORTING 2004 TSUKUBA CITY CULTURAL EXCHANGE VISIT (STAFF CONTACT: LESLIE STOBBE, 586-3352)**

BACKGROUND: On January 20, 2004, the City of Milpitas established a Memorandum of Understanding (MOU) with its Sister City, Tsukuba City, Japan, formally the Town of Kukizaki. The MOU includes annual cultural exchanges of students and adults, one visit to each city per year, through 2008. A delegation of up to seven students and four adults will conduct Tsukuba City's first official sister city visit to Milpitas from August 16 - 23, 2004.

The Sister Cities Commission has coordinated host families and local accommodations for Tsukuba students and adults. The commission plans a week of events including a host family reception, presentation at the August 17 Council Meeting, farewell dinner, and a parting ceremony. An itinerary will be distributed in July.

This request includes food services for 75 people at the annual "Friendship Party", the farewell dinner that culminates the week's events, airport transportation, individual gifts for adults and students, and an official City of Milpitas proclamation in the form of glass plaque with black plate and gold text.

Staff has estimated pricing for the following services, which were approved by the Commission on May 27, 2004:

BBQ Catering for 75 People	\$1,200.00
Airport Transportation	560.00
Individual Gifts (7 students, 4 adults)	130.00
Official City Gift	<u>120.00</u>
TOTAL	\$2,010.00

The City Council's 2004-05 budget provides \$2,600 per sister city per year. The remaining budget of \$590 would be available to purchase an official city gift when the Milpitas delegation visits Tsukuba City in June 2005.

RECOMMENDATION:

1. Approve expenses for the Tsukuba City August 2004 cultural exchange from the Council's Community Promotions budget.
2. Authorize the City Manager to execute invoices not-to-exceed \$2,010.

XVI. NEW BUSINESS

14. SUMMARY PRESENTATION OF PROPOSED RE-CALCULATED FEE SCHEDULE (STAFF CONTACT: EDGAR RODRIGUEZ, 586-3248)

BACKGROUND: The Building Inspection Division has developed a re-calculated fee Schedule based on the Council's directive to assure recovery of the "cost reasonably borne" as specified in Ordinance 164.2.

Traditionally the City of Milpitas permit fees have been based on the valuation table 1A found the Uniform Building Code published by International Conference of Building Officials (ICBO). ICBO has now become the International Code Council (ICC) and no longer publishes table 1A in the International Building Code.

The presentation addresses the building division proposal to follow the Council's directive and to eliminate the use of the valuation table.

RECOMMENDATION: Direct staff to proceed with introduction of the ordinance to adopt the Re-adjusted Fee Schedule.

* 15. **DENY MARQUEE REQUEST: MARIO RIVERA, WELLSRING COMMUNITY CHURCH (STAFF CONTACT: RENEE LORENTZEN, 586-3214)**

BACKGROUND: Mario Rivera, on behalf of Wellspring Community Church, has requested to place information on the City of Milpitas Marquee to advertise their upcoming event on June 20, 2004. The following is the requested information:

Marquee Request (to be displayed 6/16-6/20)

Father's Day
Affair
6/20/04
10 am-4 pm

Wellspring
Community Church
Info: 408-528-8713

Pursuant to City Council Resolution No. 6310, Facility Use Rules and Regulations the marquee is to be used for City sponsored activities only and City Council must approve all exceptions to the marquee policy. Included in the packet is a copy of Wellspring Community Church letter and a copy of the policy.

In the past, the Council has denied requests to use the marquee for personal parties or functions.

RECOMMENDATION: Based on previous Council direction regarding personal marquee requests, deny the request.

* 16. **APPROVE ONE (1) ORGANIZATIONAL YOUTH SPORTS ASSISTANCE FUND GRANT REQUEST (STAFF CONTACT: KERRILYN ELY, 586-3231)**

BACKGROUND: On June 17, 2003, the Milpitas City Council approved and appropriated \$10,000 for the Youth Sports Assistance Fund for the 2003-2004-budget year. Included in the Council agenda packet for review and consideration is one (1) Group Youth Sports Assistance Fund application.

Youth Sports Assistance Fund Application was received from North Valley Milpitas Bobby Sox, requesting \$1,000.00 to offset costs of hosting the 2004 National Bobby Sox Tournament of Champions on August 7th-11, 2004 in Milpitas.

This applicant meets the eligibility for the grant process. Staff has reviewed the items requested and found that items meet the application guidelines, under the section, "Funding consideration will be given," page 2, and item #2 states; "For an event where additional funding is required for a special tournament or event where participant are advancing beyond the normal spectrum or league play, hence causing additional expenses."

The Parks, Recreation and Cultural Resources Commission reviewed the North Valley Milpitas Bobby Sox application on June 5, 2004, and recommended approval of the staff recommended Organizational Youth Grant amount of \$1,000.00.

There is currently a balance of \$1,320.00 in the 2003-2004 Youth Sports Assistance Fund.

RECOMMENDATION: Approve one (1) Organizational Youth Sports Assistance grant in the amount of \$1,000.00 as recommended by the Parks, Recreation and Cultural Resources Commission leaving a balance of \$320.00 for the remainder of the fiscal year.

***16A. APPROVE FILLING VACANT POSITIONS: MAINTENANCE WORKER III, DEPUTY CITY CLERK, WORD PROCESSING OPERATOR, ADD A BUILDING PERMIT TECHNICIAN, AND DELETE AN OFFICE SPECIALIST (STAFF CONTACT: CHERIE ROSENQUIST 586-3082)**

BACKGROUND: Several vacancies have occurred in key positions due to recent retirements and a transfer. One retirement occurred in Public Works—a Maintenance Worker III in the Facilities area; and two are the City Clerk’s Office—a Deputy City Clerk and a Word Processing Operator. An internal lateral transfer of an Office Specialist moved to the Recreation Division leaving a vacancy in the Building Division.

The Maintenance Worker III is a lead position in the facilities area and is key in providing support and guidance to assigned crews. Staff would also request that if the vacancy is filled through an internal promotion, that the resulting vacancy be filled as well.

The Deputy City Clerk is essential to the organization by providing back-up to the City Clerk, guidance for the division’s staff, and assisting in the election processes. The Word Processing Operator provides daily support in processing critical Police Department documents.

Also, staff is requesting elimination of the Building Division’s Office Specialist vacancy and replacing it with a Building Permit Technician. The latter classification provides a more closely related job description to the proposed job duties, which will provide more technical support at the Permit Counter and offer technical and clerical support services to the division.

Sufficient funds are included in the fiscal year 2004-05 budget to cover salaries and benefits. Therefore, staff is requesting approval to fill the above vacancies to meet the ongoing service needs of the City.

RECOMMENDATION: Approve filling vacant positions as outlined above.

XVII. ORDINANCES (NONE)

XVIII. RESOLUTIONS

*** 17. ADOPT A RESOLUTION CALLING A MUNICIPAL ELECTION AND REQUESTING CONSOLIDATION: NOVEMBER 2, 2004 (STAFF CONTACT: GAIL BLALOCK, 586-3001)**

BACKGROUND: Chapter 200, Title I of the Milpitas Municipal Code provides for municipal elections to be held on the same day as the Statewide General Election. The Statewide General Election will be held on Tuesday, November 2, 2004. A resolution has been drafted calling for a General Municipal Election on Tuesday, November 2, 2004, for the purpose of electing a Mayor and two members of the City Council. The resolution also requests consolidation of the Milpitas Municipal Election with the Statewide General Election and provides for the services of the Santa Clara County Registrar of Voters.

RECOMMENDATION: Adopt a resolution calling a General Municipal Election on November 2, 2004, and requesting consolidation.

*** 18. RESOLUTION GRANTING PARTIAL INITIAL ACCEPTANCE AND PARTIAL ACCEPTANCE AGREEMENT: PARC METROPOLITAN (PROJECT NUMBER NO. 3061) (STAFF CONTACT: ROBERT WANG 586-3327)**

BACKGROUND: A portion of public improvements consisting of the west and middle parks and Curtis Avenue roadway improvements are now ready for initial acceptance in accordance with the improvement agreement. The developer faithful performance bond may be reduced to

\$2,091,260, which is 10% of the contract amount for the completed work and 100% of the public improvements not yet to be accepted.

RECOMMENDATION: Adopt resolution granting initial acceptance subject to the usual one-year warranty period and reduction of the faithful performance bond to \$2,091,260.

- * **19. ADOPT RESOLUTION GRANTING INITIAL ACCEPTANCE: VERITAS PHASE I IMPROVEMENTS (PROJECT NO. 3123) (STAFF CONTACT: MEHDI KHAILA, 586-3328)**

BACKGROUND: The public improvements for this project, which were approved in June of 2001, have been completed by the developer. This work is, therefore, now ready for initial acceptance in accordance with the improvement agreement. The developer's faithful performance bond can be reduced to \$64,000.00, which is 10% of the original amount.

RECOMMENDATION: Adopt a resolution granting initial acceptance subject to the usual one-year warranty period and reducing the bond to \$64,000.00.

XIX. BIDS AND CONTRACTS

- * **20. APPROVE CONTRACT RENEWAL FOR EXCESS WORKERS' COMPENSATION INSURANCE (STAFF CONTACT: CHERI ROSENQUIST, 586-3082)**

BACKGROUND: The City carries excess workers' compensation insurance in accordance with State law. Our insurance broker, Cal-Surance, was able to obtain coverage through ACE American Insurance Company for fiscal year 2004-05. Last year (FY 2003/04) the cost of the excess worker's compensation insurance was \$179,737. This year staff was quoted an overall rate increase of twenty-five percent (25%). The City will receive coverage up to a \$1,000,000 limit after a \$750,000 deductible. The renewal premium for fiscal year 2004-05 will be approximately \$229,000, a \$40,000 increase over the budget for 2004/05. In addition, the State of California has now mandated that employers pay California Insurance Guarantee Association a two percent (2%) surcharge on workers compensation premiums to cover statewide unpaid claims. This cost is also unexpected and estimated at \$5,000.

RECOMMENDATION: Authorize staff to enter into a contract with Cal-Surance in an amount not to exceed \$229,000. Staff is also requesting approval of a budget appropriation of \$45,000 from the General Fund Contingency Reserve to cover the insurance increase and for the State's surcharge.

- * **21. APPROVE AN AGREEMENT TO EXTEND THE AGREEMENT WITH TRIAXIAL DATA SYSTEMS AND PERFORM ADDITIONAL PROGRAMMING SERVICES FOR AN AMOUNT NOT TO EXCEED \$10,000 (PROJECT NO. 8110) (STAFF CONTACT: TERRY MEDINA, 586-2703)**

BACKGROUND: In 2001, the City of Milpitas embarked upon the implementation of a new integrated Permitting System. On April 17, 2001, Council approved an agreement with TriAxial Data Systems for the installation of permitting software and data conversion. In October 2001, the new system was put into production. In December 2001, Council approved the first amendment to the TriAxial Data System agreement that provided public access to permit information via the internet and provided for the transmittal of permit information to the County Assessor. The Permitting System is now being used by the Building, Engineering, Fire and Planning departments.

In October 2003, new requirements were implemented regarding the control of Storm Water Runoff. Those requirements mandate the permitting, tracking and reporting of Storm Water Runoff. In order to meet the needs of this monitoring and tracking it is necessary to implement two new permit types to the existing Permitting system. TriAxial Data Systems is the most

qualified vendor to modify the existing permitting software since they were the original developers and installers of the system. TriAxial Data Systems has provided the City a quote for an amount not to exceed \$10,000 to modify the current permitting system to allow tracking of both Private and Public Operation Permits, to create new reports and conduct training of staff on the new modifications. In order to perform this work it is necessary to amend the TriAxial agreement to include the additional scope of work, increase the contract amount by \$10,000, and extend the agreement through June 30, 2005.

Approval of the amendment to the agreement with TriAxial Data Systems will provide the City of Milpitas with the tools necessary to track and report on Storm Water Runoff within the City.

Funding for this amendment is available in the New Permits System Capital Improvement Program (CIP 8110).

RECOMMENDATION:

1. Authorize the City Manager to amend the agreement with TriAxial Data Systems for programming services related to the tracking of Storm Water Runoff in an amount not to exceed \$10,000.
2. Extend the agreement until June 30, 2005, subject to approval as to form by the City Attorney.

*** 22. APPROVE AN AGREEMENT WITH TELECOMMUNICATIONS ENGINEERING ASSOCIATES FOR INSTALLATION OF A FIRE STATION ALERTING SYSTEM (STAFF CONTACT: BILL MARION, 586-2701)**

BACKGROUND: The new Computer Aided Dispatch (CAD) System includes the capability to alert fire stations when assigned calls for emergency service. When alerted, the public address system is activated, room lighting is turned on, a tone is sounded and station appliances such as the stove are turned off. The responding unit will then press an acknowledgement button, which will notify the dispatcher and open the station doors. These functions will be controlled by the new CAD system, eliminating the need for multiple radio transmissions and manual operation of various devices such as the station doors.

The detailed design of this system has been completed and the necessary equipment for all four fire stations and the dispatch center has been bid through the Purchasing Division. This equipment will require installation and integration with the existing dispatch communication system and station equipment. Due to the complexities and special skills required in the installation of this equipment, staff is recommending that the services of an experienced vendor be utilized. Telecommunications Engineering Associates is the manufacturers recommended installer and provided installation services during the Dispatch Center remodel in 2002. Their knowledge of the existing public safety communication system and ability to integrate the new and existing equipment will greatly facilitate the implementation of this portion of the CAD project. Telecommunications Engineering Associates has provided this type of highly specialized service to a number of local Public Safety agencies including the City of Mountain View, City of San Carlos, City of San Mateo, and City of South San Francisco, as well as several additional cities and Fire Districts.

Telecommunications Engineering Associates has provided a proposal for equipment installation services to the City. Upon delivery of equipment, installation is estimated to take 6 weeks to complete. Staff is recommending that Council authorize the City Manager to execute an agreement for equipment installation with TEA in an amount not to exceed \$45,243.76. Funding for the installation services is available in the Expanded Public Safety Technology CIP #3389.

RECOMMENDATION: Authorize the City Manager to execute an agreement in an amount not to exceed \$45,243.76 for equipment installation with Telecommunications Engineering Associates, subject to approval as to form by the City Attorney.

* 23. **APPROVE RENEWAL OF ANNUAL SOFTWARE SUPPORT AND MAINTENANCE FEES WITH VARIOUS VENDORS THROUGH JUNE 30, 2005 (STAFF CONTACT: TERRY MEDINA, 586-2703)**

BACKGROUND: The City of Milpitas manages numerous computer applications that were developed by various vendors to support the business needs of the City. These systems typically require an active software license and an annual support services fee. The terms of these services vary but for the most part correlate with the City's fiscal year. The following vendors software license and support services will be expiring on or around June 30, 2004 and require renewal in order to continue to use the computer application.

Best Software, Inc. for Recruitment Tracking

In fiscal year 1997/98, the City of Milpitas implemented a module of the ABRA software suite for tracking and supporting the recruitment of potential new employees. The system includes licensed software and maintenance support provided by Best Software, Inc., the vendor of the ABRA software. Maintenance and support of the system are provided through the renewal of the annual fee of \$1,205.00.

Best Software, Inc. for Fixed Asset Tracking

In fiscal year 2001/02, the City of Milpitas implemented a Fixed Asset Tracking system for monitoring and tracking the City's fixed assets. The system includes licensed software and maintenance support provided by Best Software, Inc., the vendor of the Fixed Asset software. Maintenance and support of the system are provided through the renewal of the annual fee of \$2,810.00.

Granicus for Web Streaming

In fiscal year 2003/04, the City of Milpitas implemented a system to provide live web video streaming of City Council and Planning Commission Meetings. The system includes licensed software and maintenance support provided by Granicus, the vendor of the streaming media software. Maintenance and support of the system are provided through the renewal of the annual fee of \$9,000.00.

Identix, Inc. for Livescan Fingerprinting System

In fiscal year 1999/00, the City of Milpitas implemented a new Livescan Fingerprinting system that supports the fingerprinting of applicants for the Police Department. The system includes licensed software and maintenance support provided by Identix, Inc., the vendor of the Livescan Fingerprinting application. Maintenance and support of the system are provided through the renewal of the annual fee of \$5,417.83.

Intergraph Corporation for Geographic Information System

In fiscal year 1998/99, the City of Milpitas embarked upon the implementation of a Geographic Information System (GIS) with approval for base map development services. The system includes licensed software and maintenance support provided by Intergraph Corporation, the vendor of the GIS application. Maintenance and support of the system are provided through the renewal of the annual fee to Intergraph of \$12,296.

KIS Computer Center for Cisco Equipment Support

In fiscal year 2002/03, the City of Milpitas implemented a new internet firewall for protecting the City's computer information assets from computer viruses. The one year hardware warranty for the equipment that is used to support the system has expired and requires renewal. Maintenance and support of the system are provided through the renewal of the annual fee of \$2,626.28.

Motorola for Mugshot Instant Image System

In fiscal year 1999/00 the City of Milpitas implemented a system that provides access to the Instant Image Mugshot System. The system includes licensed software and maintenance support

provided by Motorola, the vendor of the instant image hardware and software. Maintenance and support of the system are provided through the renewal of the annual fee of \$3,071.00.

Northrop Grumman for Water Meter Reading Hardware and Software

The City of Milpitas provides drinking water to the residents of the City. In order to monitor and charge for water usage the City relies upon water meters that measure the flow of water to a facility. The meters are read and the data captured through hardware and software provided by Northrop Grumman. The system includes licensed software and maintenance support provided by Northrop Grumman, the vendor of the water meter reading system. Maintenance and support of the system are provided through the renewal of the annual fee of \$2,115.96.

Peelle Technologies, Inc. for Document Imaging System

In fiscal year 2001/02, the City of Milpitas implemented a new Document Imaging system using software that supports the electronic retrieval of document images. Maintenance and support of the system are provided through the renewal of the annual fee of \$13,191.35.

Tiburon, Inc for the Police Records Management System

In fiscal year 1996/97, the City of Milpitas implemented a new Police Records Management System that includes the base system and all upgraded modules that include: Case Management, Crime Analysis, Gang System, Property Management, Traffic Management, Crime Statistics, and Warrant Tracking. Maintenance and support of the system are provided through the renewal of the annual fee of \$29,021.00.

RECOMMENDATION: Authorize the City Manager to approve the payment of the annual software support and maintenance fees to Best Software, Inc. for Recruitment Tracking in the amount of \$1,205.00; Best Software, Inc. for Fixed Asset Tracking in the amount of \$2,810.00; Granicus for Web Streaming in the amount of \$9,000.00; Identix, Inc. for the Livescan Fingerprinting System in the amount of \$5,417.83; Intergraph Corporation for the Geographic Information System in the amount of \$12,296; KIS Computer Center for Cisco Equipment Support in the amount of \$2,626.28; Motorola for the Mugshot Instant Image System in the amount of \$3,071.00; Northrop Grumman for Water Meter Reading Hardware and Software in the amount of \$2,115.96; Peelle Technologies, Inc. for the Document Imaging System in the amount of \$13,191.35; Tiburon , Inc for the Police Records Management System in the amount of \$29,021.00. There are sufficient funds in the Information Services Operating budget for this request.

- * 24. **APPROVE PLANS AND SPECIFICATIONS AND AUTHORIZE THE ADVERTISEMENT FOR BID PROPOSALS: ABEL/CALAVERAS RIGHT TURN LANE (PROJECT NO. 4186), KORVE ENGINEERING (STAFF CONTACT: GREG ARMENDARIZ, 586-3401)**

BACKGROUND: Plans and specifications for the subject project have been completed in accordance with the approved five-year Capital Improvement Program (CIP). The project provides an additional turn lane from northbound Abel Street to eastbound Calaveras Blvd. Right of way acquisition is currently underway. Construction contract will not be awarded until needed right of way and permits are acquired.

The Engineers estimated construction cost for the work is approximately \$540,000, approximately half of which is funded by developer contributions. It is anticipated that a budget appropriation will be required to award this project for construction. A copy of the project plan title sheet is included in the Council's agenda packets. Complete plans and specifications are available for review in the office of the City Engineer.

RECOMMENDATION:

1. Approve plans and specifications.
2. Authorize advertising for bid proposals.

- * **25. APPROVE PLANS AND SPECIFICATIONS AND AUTHORIZE ADVERTISEMENT FOR BID PROPOSALS: GREAT MALL AND TASMAN/I880 CAPACITY IMPROVEMENTS (PROJECT NO. 4178), KORVE ENGINEERING (STAFF CONTACT: GREG ARMENDARIZ, 586-3401)**

BACKGROUND: Plans and specifications for the subject project have been completed in accordance with the approved five-year Capital Improvement Program (CIP). The project provides increase the traffic capacity of the existing Great Mall Parkway/I880 interchange. Improvements include: At the southbound ramps convert the eastbound right lane to a free turning right; and widen the southbound off ramp. At the northbound ramps add a third eastbound thru lane.

The Engineer's estimated construction cost for the work is approximately \$420,000, and funds are available in the project budget. A copy of the project plan title sheet is included in the Council's agenda packets. Complete plans and specifications are available for review in the office of the City Engineer.

RECOMMENDATION:

1. Approve plans and specifications.
2. Authorize advertising for bid proposals.

- * **26. APPROVE CONSULTANT AGREEMENT: DESIGN - OLIVIA CHEN CONSULTANTS - CITY RESERVOIR EVALUATION AND UPGRADES (PROJECT NO. 7091) (STAFF CONTACT: DOUG DEVRIES, 586-3313)**

BACKGROUND: In accordance with the City's consultant selection procedure, Olivia Chen Consultants has been selected to perform the preparation of construction plans, specification, and estimates for the City Reservoir Evaluation & Upgrades project. This project is in the current five-year Capital Improvement Program (CIP). It involves system upgrade to optimize operations after the recent chloramine conversion by San Francisco Public Utilities Commission (SFPUC). The needed improvement is to insure proper circulation of water through the reservoirs to avoid degradation of water quality. An agreement with Olivia Chen Consultants has been negotiated for an amount not to exceed \$74,400. There are sufficient funds available from the project budget.

RECOMMENDATION: Authorize the City Manager to execute the agreements with Olivia Chen Consultants, in an amount not to exceed \$74,400, subject to approval as to form by the City Attorney.

- * **27. AUTHORIZE CITY MANAGER TO EXECUTE AGREEMENT AMENDMENT: MARK THOMAS & CO., INC., 237/I-880 INTERCHANGE (PROJECT NO. 4170) (STAFF CONTACT: DOUG DEVRIES, 586-3313)**

BACKGROUND: On July 1, 1997, the City Council entered into a contract with Mark Thomas & Co., Inc., for design of 237/I-880 Interchange project (Stage A and B). Construction has been completed and record drawings are ready to be prepared.

Staff recommends that Mark Thomas & Co., Inc., perform additional services to complete the record drawings. An agreement amendment is proposed for these additional services. Staff has negotiated a scope and fee for these services not to exceed \$10,000.00, which is considered reasonable for the work. There are sufficient funds in the project budget to cover this additional expense.

RECOMMENDATION: Authorize the City Manager to execute the agreement amendment with Mark Thomas & Co., Inc., in the amount of \$10,000.00, subject to approval as to form by the City Attorney.

- * **28. AUTHORIZE CITY MANAGER TO EXECUTE AGREEMENT AMENDMENT: HMH INCORPORATED, MONTAGUE WIDENING PROJECT (PROJECT NO. 4179) (STAFF CONTACT: GREG ARMENDARIZ, 586-3401)**

BACKGROUND: On July 7, 1998, the City Council awarded a consultant contract to HMH Incorporated for the design of Montague Expressway widening from Great Mall Parkway to Highway 680.

Staff recommends that HMH Incorporated perform additional services for analysis and consultation to determine the feasibility of the proposed redesign and construction of the project to accommodate a future overlay of Montague Expressway by Santa Clara County. An agreement amendment is proposed for these additional services. Staff has negotiated a scope and fee for these services not to exceed \$9,600, which is considered reasonable for the work. There are sufficient funds in the project budget(s) to cover this additional expense.

RECOMMENDATION: Authorize the City Manager to execute the agreement amendment with HMH Incorporated, in the amount of \$9,600, subject to approval as to form by the City Attorney.

- * **29. AUTHORIZE THE CITY MANAGER TO EXECUTE AMENDMENT NO. 8 WITH THE CITY OF SAN JOSE FOR SOUTH BAY WATER RECYCLING IN-KIND SERVICES (STAFF CONTACT: DARRYL WONG, 586-3345)**

BACKGROUND: In 1995, Council approved an agreement with the City of San Jose to provide engineering services for the South Bay Water Recycling Program. Over the past several years, seven amendments were approved and several projects have been completed. The contract expires in June 2004. The remaining work includes resolution of litigation for the M-4 distribution pipeline project and plan checking and inspection for on-site irrigation system retrofits along the new M-2, M-3, and M-4 distribution pipeline. The proposed 8th Amendment provides a two-year time extension and slightly modifies the insurance requirements. The City's Risk Manager has reviewed the insurance requirements and accepts the modification. There is no change to the contract dollar amount.

RECOMMENDATION: Authorize the City Manager to execute the agreement amendment with the City of San Jose, subject to approval as to form by the City Attorney.

- * **30. APPROVE CONTRACT BETWEEN THE CITY OF MILPITAS AND NEW ORIENT RESTAURANT FOR THE SENIOR NUTRITION PROGRAM (STAFF CONTACT: KATHLEEN YURCHAK, 586-3209)**

BACKGROUND: In an effort to expand the meal options and respond to customer requests for the Milpitas Senior Center's Nutrition Program, an Asian meal will now be offered twice a week. Enclosed in the Council's packet is the contract between the City of Milpitas and New Orient Restaurant a County of Santa Clara Nutrition Program approved restaurant, detailing the meal program. All funds expended on the meals have been budgeted in the County of Santa Clara Senior Nutrition Program budget and Recreation Services FY 04/05 operating budget. The total budget for the 7,425 meals is \$24,132 and the contract stipulates invoicing will not exceed \$3.25 per meal. Our current caterer, Bateman, will serve the remaining 9,600 meals.

The City of Milpitas has contracted with the County of Santa Clara in implementing the Senior Nutrition Program since March 1978. The Program serves seniors, sixty years and older, 249 days per year, an average of 68 meals per day, for a total of 17,025 meals per year for both the Asian meals and the meals catered by Bateman.

RECOMMENDATION: Approve contract with New Orient Restaurant from July 1, 2004, through June 30, 2005 for the Senior Nutrition Program. The total amount of this contract is \$24,132, not to exceed \$3.25 per meal, and subject to approval as to form by the City Attorney.

* **31. AUTHORIZE PURCHASE OF RADIO MODEMS (STAFF CONTACT: BILL MARION, 586-2701)**

BACKGROUND: As part of the new Computer Aid Dispatch system (CAD) project, mobile computers will be installed in eighteen Fire vehicles. These mobile computers require radio modems in order to communicate with the dispatch system. Additionally, radio modems acquired for the Police vehicles in 1999 require replacement, as the radio service they utilize will be phased out in 2005. Verizon Wireless, the service provider used by the City can provide modems at a discounted price of \$599.99 each as part of our on-going service agreement. These modems were quoted from other sources at prices ranging from \$851.23 to \$929.48 each. Total cost for 44 modems for Police and Fire vehicles is \$29,666.52. Installation of the modems will be completed by City staff and is estimated to take 6 weeks from delivery of equipment.

RECOMMENDATION: Approve the purchase of radio modems from Verizon Wireless in an amount not to exceed \$29,666.52.

* **32. AWARD OF BID FOR THE PURCHASE OF FIRE STATION ALERTING EQUIPMENT (PROJECT NO. 3389) (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: Staff developed detailed specifications for the purchase of remote alerting systems for each of the fire stations that will be interfaced with the new public safety CAD system. The system allows dispatchers to remotely alert a specific fire station of an emergency call and operate various devices such as opening station doors. Equipment was grouped by manufacturer for bidding and suppliers were asked to bid on all manufacturer's groups. Staff sent a Request for Quotation to nine radio/alerting systems suppliers on Purchasing's bidders list and the manufacturer of the majority of the equipment. Three bids were received but only one supplier, Day Wireless Systems, was able to offer pricing on all of the requested equipment. TEA did not bid on two of the four groups of equipment and Zetron, Inc. did not bid on three of the four groups.

The following is the recap of the bids received including tax and freight:

<u>Bidder</u>	<u>Amount</u>
Day Wireless Systems	\$32,502.00
TEA	\$18,200.00
Zetron, Inc.	\$20,730.00

Funds for the purchase of the remote alerting system equipment is available in the Expanded Public Safety Technology CIP project.

RECOMMENDATION: Award the bid for the remote alerting system equipment to Day Wireless Systems, the most responsive bidder, in the amount of \$32,502.00 and authorize the purchase.

XX. CLAIMS AND DEMANDS

* **33. APPROVE PAYMENT REQUEST: MISCELLANEOUS VENDORS / CONTRACTORS (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

\$10,000.00 to Keyser Marston Associates for consulting services to determine the feasibility of developing an auto mall along the I880 corridor. (Funds are available from the Redevelopment Agency operating budget for this service.)

RECOMMENDATION: Approve the purchase request.

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, JULY 6, AT 7:00 P.M.**



CITY COUNCIL

Jose Esteves, Mayor

Patricia Dixon, Vice Mayor

Bob Livengood, Councilmember

Althea Polanski, Councilmember

Armando Gomez Jr., Councilmember

MILPITAS CITY COUNCIL

NOTICE OF SPECIAL MEETING

June 10, 2004

5:00 p.m.

Council Chambers, City Hall

455 E. Calaveras Blvd

NOTICE IS HEREBY GIVEN that, pursuant to Government Code section 54956, the Mayor has called a Special Meeting of the Milpitas City Council to be held at 5:00 p.m. on Thursday, the 10th day of June, 2004, in the Council Chambers, 455 E. Calaveras Blvd, Milpitas, California. The purpose of the meeting is as follows:

To Consider Appropriate Recognition in the City of Milpitas of Former United States President Ronald Wilson Reagan and to Consider Options for Observing a National Day of Mourning Friday, June 11, 2004.

Gail Blalock, City Clerk
408/586-3001

Date: June 9, 2004

455 E. Calaveras Blvd, Milpitas, CA 95035

CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
June 1, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

1. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: APN #022-08-042

Negotiating Parties: City of Milpitas and County of Santa Clara

Agency Negotiator: Thomas J. Wilson

Under Negotiation: Terms and Conditions for Disposition or Lease

2. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: Vacant Property N. Main Street (APN No. 2208003)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

3. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: 163 North Main Street, APN #022-08-041

Negotiating Parties: Mid-Peninsula Housing Coalition, a California

Non-Profit Public Benefit Corporation, City of Milpitas, and Milpitas Redevelopment Agency

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for disposition or lease

4. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: 120-150 Winsor Street and 116-130 N. Main Street

Negotiating Parties: Milpitas Redevelopment Agency and Dorothy A. & Ruth A. Winsor

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

5. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

(Pursuant to Government Code Section 54957)

Titles: City Attorney and City Manager

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES: May 18, 2004

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

Proclamation:

- Affordable Housing Week, June 5-12, 2004

Commendations:

- Renaissance Students:

Erinn Kim	Nick Hawley	Ryan Robinson
Kevin Lai	Sang Nguyen	Rachel Purification
Brittany Kessinger	Billy Boulett	Lina Woldeyes
Amrit Dosanjh	Veronica Yee	Carlos Correa
Anne Villaruz		
- Whitney D. Cole, Charles Murray Community Leadership Scholarship
- Jasmyne Jamerson, Girls for a Change Leadership Scholarship Travel Award
- Eric Jackson, Smart Lifestyle Student Scholarship

Certificates of Appreciation:

- Food Donor Certificates for the April Joint City/School District Evacuation and Mass Feeding Exercise at Rose Elementary School

Burger King, 175 W. Calaveras Blvd.	LSI Logic, 1621 Barber Lane
Burger King, 1475 Dempsey Rd.	Lyon's, 765 E. Calaveras Blvd.
Marie Calenders, 333 S. Abbott Ave.	McDonald's, 1249 Great Mall Dr.
Carl's Jr., 129 W. Calaveras Blvd.	McDonald's, 99 N. Milpitas Blvd.
Chili's, 300 W. Calaveras Blvd.	McDonald's 1854 N. Milpitas Blvd.
Domino's Pizza, 55 Dempsey Rd.	Nob Hill Foods, 401 Jacklin Rd.
Eric's Deli, Milpitas Town Center	Omega Restaurant, 90 S. Park Victoria Dr.
Flames, 1192 E. Calaveras Blvd.	Ravioli's, 57 N. Milpitas Blvd.
Georgio's, 643 E. Calaveras Blvd.	Taco Bell, 774 S. Main St.
Hot Dog On A Stick, 610 Great Mall Dr.	Taco Bell, 1365 S. Park Victoria Dr.
Hungry Hunter, 1181 E. Calaveras Blvd.	Taco Bell, 81 Ranch Dr.
In-N-Out Burger, 50 Ranch Dr.	Town Center Pizza, 85 N. Milpitas Blvd.
Kentucky Fried Chicken, 73 S. Main St.	Wal-Mart, 301 Ranch Rd.
Koongs, 103 N. Milpitas Blvd.	Wienerschnitzel, 1333 S. Park Victoria Dr.
- Ethics Code Participants
The City Council recognizes the contributions of over 100 Milpitas residents, elected and appointed officials, and city staff who helped develop an ethics code to guide officials and candidates for public office on ethical issues. These volunteers participated in one to four workshops led by the Community Advisory Commission during March, April and May. Many hours were spent discussing ethics, ethical behavior, and identifying six core values, which formed the basis for the Ethics Code and Guidelines. Their efforts will help Milpitas officials be their best!

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. APPROVAL OF AGENDA

XI. CONSENT CALENDAR (Items with Asterisks)

XII. PUBLIC HEARINGS (NONE)

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: May 18, 2004

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

RA5. Adopt Resolutions Approving the 2004-2005 Operating Budget, 2004-2005 Redevelopment Agency Budget, 2004-2005 Capital Improvement Budget, and the Five-Year Capital Improvement Program (Staff Contact: Emma Karlen, 586-3145)

***RA6. Approve Purchase Order; Civic Center Project No. 8026 (Staff Contact: Greg Armendariz, 586-3401)**

***RA7. Approve Authorization to Enter into Negotiations with USA Properties Fund, Inc., for Affordable Housing Unit Assistance (Staff Contact: Felix Reliford, 586-3071)**

***RA8. Approve Agreement Amendment: Harris & Associates, Milpitas Library Project, Winsor and Weller Avenue Plan Line, Right of Way Vacation, and Street Improvements, Project No. 8153 (Staff Contact: Steve Erickson, 586-3414)**

RA9. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

- 1. Request for Donation: Child Spree Program Sponsored by Milpitas Kiwanis and Mervyn's: Mayor Esteves**
- * 2. Approve the Mayor's Appointment to the Mobile Home Park Rental Review Board: Mayor Esteves**
- 3. Review of July 4th Sports Center Programs and Fees: Councilmember Polanski (Staff Contacts: Bonnie Greiner, 586-3227 and Kathleen Yurchak, 586-3209)**

Community Advisory Commission

- 4. Consider Additional Information from the Community Advisory Commission Regarding Recommendation to Increase the Mayor's Term Length from Two to Four Years (Staff Contact: Tambri Heyden, 586-3280)**

XV. UNFINISHED BUSINESS (NONE)

XVI. NEW BUSINESS

- 5. Adopt Resolution Approving the City of Milpitas Code of Ethics and Behavioral Standards Document; Adopt Resolution Revising and Renaming Standard Operating Procedure No. 16-1 (formerly known as the Code of Ethics); Review and Approve the Implementation Plan for the City of Milpitas Code of Ethics; and Set Dates for a City Council Special Meeting for Ethics Code Training and a Campaign Candidates Training Workshop (Staff Contact: Tambri Heyden, 586-3280)**

6. **Consideration of Proposed Standard Operating Procedure/ Protocol Setting Forth Procedures and Policies for Making City Records Available to the Public and Providing Notice and Access to Public Meetings (Staff Contact: Steve Mattas, 586-3040)**
7. **Consideration of Development of a City Council Handbook including the Topics that the City Council May Desire to Include in the Handbook (Staff Contact: Steve Mattas, 586-3040)**
- * 8. **Deny Fee Waiver Request for the Punjabi Sahit Sabha Literary Function on August 8, 2004, in the Amount of \$494 (Staff Contact: Kathleen Yurchak, 586-3209)**
- * 9. **Request Authorization to Fly Tree City USA Flag at the Public Works Building (Staff Contact: Carol Randisi, 586-2601)**

XVII. ORDINANCES (NONE)

XVIII. RESOLUTIONS

- * 10. **Adopt a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for Main Sewage Pump Station Site Improvements, Project No. 6079, (Staff Contact: Mark Rogge, 586-3403)**
- * 11. **Adopt Resolution Relating to Statements of Qualifications of Candidates in Municipal Elections (Staff Contact: Gail Blalock, 586-3001)**
- * 12. **Adopt a Resolution to Release Unclaimed Checks in Accordance with SOP No. 26-1 (Staff Contact: Dante D. Ong, 586-3132)**
- * 13. **Adopt Resolution of Intention to Levy Assessments for Fiscal Year 2004-2005, Preliminarily Approving the Annual Engineer's Report and Providing for Notice of Public Hearing: Landscaping and Lighting Maintenance District No. 95-1, McCarthy Ranch, Program No. 9474, (Staff Contact: Mehdi Khaila, 586-3328)**
- * 14. **Adopt Resolution of Intention to Levy Assessments for Fiscal Year 2004-2005, Preliminarily Approving the Annual Engineer's Report and Providing for Notice of Public Hearing: Landscaping and Lighting Maintenance District No. 98-1, Sinclair Horizon, Program No. 9489, (Staff Contact: Mehdi Khaila, 586-3328).**

XIX. BIDS AND CONTRACTS

- * 15. **Approve and Authorize Recreation Services to Enter into a Contract with the Milpitas Unified School District for Transportation Services for Summer 2004 (Staff Contact: Dale Flunoy, 586-3228)**
- * 16. **Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals: 2004 Street Resurfacing, Project No. 4182 (Staff Contact: Steve Erickson, 586-3414)**
- * 17. **Request Council Authorization: Renewal of Urban Search and Rescue (USAR) Program Participation Agency Agreement (Staff Contact: Bill Weisgerber, 586-2811)**
- * 18. **Approve Contract with Mary Krost & Associates to Provide Safety Training for City Employees (Staff Contact: Cherie Rosenquist, 586-3082)**
- * 19. **Approve Senior Nutrition Amended Contract with County of Santa Clara (Social Services) (Staff Contact: Kathleen Yurchak, 586-3209)**

- * 20. **Authorize City Manager to Execute Contract: Wildlife Center of Silicon Valley Animal Control Services for the City of Milpitas (Staff Contact: Felix Reliford, 586-3071)**
- * 21. **Authorize the City Engineer to Execute a Contract Change Order: Piedmont Road Bike Lane and Sidewalk Improvements at St. John's Cemetery (Project No. 4214) (Staff Contact: Steve Erickson, 586-3414)**
- * 22. **Approve Agreement Amendment: 4 LEAF Inc., Silicon Valley Intelligent Transportation System (ITS) Project No. 4219 (Staff Contact Mike McNeely, 586-3301)**
- * 23. **Authorize City Manager to Execute Agreement Amendment: Overland Pacific & Cutler, Main Sewage Pump Station Improvements, Project No. 6079 (Staff Contact Greg Armendariz, 586-3401)**
- * 24. **Approve Budget Appropriation and Authorize the City Manager to Execute Amendment to Agreement: Hilton Farnkopf & Hobson LLC Solid Waste Contract Extension and Rate Negotiations (Staff Contact: Darryl Wong, 586-3345)**

XX. CLAIMS AND DEMANDS

- * 25. **Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Lou Zenzen, 586-3161)**

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, JUNE 15, AT 7:00 P.M.**

CITY OF MILPITAS
Agenda Reports
Milpitas City Council Meeting
June 1, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

XII. PUBLIC HEARINGS (NONE)

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: May 18, 2004

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

RA5. ADOPT RESOLUTIONS APPROVING THE 2004-2005 OPERATING BUDGET, 2004-2005 REDEVELOPMENT AGENCY BUDGET, 2004-2005 CAPITAL IMPROVEMENT BUDGET, AND THE FIVE-YEAR CAPITAL IMPROVEMENT PROGRAM (STAFF CONTACT: EMMA KARLEN, 586-3145)

BACKGROUND: During the May 11, 2004, Budget Public Hearing, the City Council conceptually approved the City/Agency Proposed FY 2004-05 Annual Budget, the FY 2004-05 Capital Improvement Program (CIP) Budget and the Five-Year Capital Improvement Program (2004-2009). Based on actions conceptually approved by the Council, the resolutions, included in the Council's agenda packets, are submitted for the Council's approval of the Final 2004-05 Annual Budget totaling \$125,538,449.

The Final Operating Budget, CIP Budget and Five Year Capital Improvement Program will incorporate changes identified in the modification memo included in this packet. The published Final Budget Documents will be distributed to the City Council prior to the September 7, 2004, Council meeting.

RECOMMENDATION: Adopt and approve the following:

1. A Resolution adopting the FY 2004-05 Appropriations Limit of \$50,620,037 for the City of Milpitas.
2. A Joint Resolution of the City and Redevelopment Agency approving the City's Final FY 2004-05 Budget of \$125,538,449.
3. A Joint Resolution of the Milpitas Redevelopment Agency and the City of Milpitas making findings following a Public Hearing for use of Redevelopment funds.
4. A Resolution of the Milpitas Redevelopment Agency authorizing payments to the City of Milpitas pursuant to the Second Amended and Restated Public Works Agreement.
5. A Resolution of the Milpitas Redevelopment Agency determining that the planning and administration expenses to be funded in FY 2004-05 by the Housing Reserve Fund are necessary for the production, improvement and/or preservation of affordable housing for the low and moderate-income households.
6. The FY 2004-05 Capital Improvement Budget of \$14,323,712.
7. The Five-Year Capital Improvement Program for the Fiscal Years 2004-05 through 2008-09 of \$61,792,766.

***RA6. APPROVE PURCHASE ORDER; CIVIC CENTER PROJECT NO. 8026 (STAFF CONTACT: GREG ARMENDARIZ, 586-3401)**

BACKGROUND: The City Hall front water fountain and rear waterfall ponds require chlorination water treatment. Currently this treatment is performed manually by maintenance staff with the use of chlorine tablets similar to swimming pool water treatment. Installation of an automatic chlorination generation and feeding system would provide labor savings and a substantial cost savings on materials. An automatic chlorine generation system manufactures chlorine by chemically breaking down ordinary salt. Salt is substantially less expensive than the chlorine tablets currently used. The system would generate and dispense chlorine on demand thereby eliminating the need to store chlorine, which is a hazardous material. The labor time-savings will allow maintenance staff to focus on other elements of the Civic Center and other city facilities.

Staff recommends a sole source purchase of the automatic chlorination system, because there is only a single supplier known in the area for the required system suitable for the fountain and waterfall pond. Staff recommends the purchase of the automatic chlorination system from Severn Trent Services for \$33,612. Sufficient funds are available in the City Hall project. After approval of this purchase order, the remaining project contingency is \$64,365.

RECOMMENDATION: Approve purchase order for Automatic Chlorine Generator and Feeding System with Severn Trent Services for \$33,612.

***RA7. APPROVE AUTHORIZATION TO ENTER INTO NEGOTIATIONS WITH USA PROPERTIES FUND, INC., FOR AFFORDABLE HOUSING UNIT ASSISTANCE (STAFF CONTACT: FELIX RELIFORD, 586-3071)**

BACKGROUND: USA Properties Fund, Inc., based in Roseville, California, is proposing to develop two separate, but adjacent residential projects: 120 units of senior housing and 84 market rate units. The project will be located in the South Main Street area, north of Montague Expressway. Staff has met with the developer about making all 120 units of the senior housing project affordable with financial assistance from the Agency. The final details of the agreement will be presented to the City Council for approval at a later date.

It is recommended that the Agency authorize staff to enter into negotiations with USA Properties Fund for the purpose of providing financial assistance from the Agency's 20% affordable housing set-aside funds. The Agency's authorization to enter into negotiations should not be considered implied approval of any of the forms of assistance requested by the developer. Any agreement negotiated is subject to Agency/Council review and approval.

RECOMMENDATION: Approve authorization to enter into negotiations with USA Properties Fund, Inc., to provide Agency finance assistance from its 20% affordable housing set-aside funds.

***RA8. APPROVE AGREEMENT AMENDMENT: HARRIS & ASSOCIATES, MILPITAS LIBRARY PROJECT, WINSOR AND WELLER AVENUE PLAN LINE, RIGHT OF WAY VACATION, AND STREET IMPROVEMENTS, PROJECT NO. 8153 (STAFF CONTACT: STEVE ERICKSON, 586-3414)**

BACKGROUND: On October 7, 2003, City Council awarded a consultant contract to Harris and Associates for mapping, survey, and utility engineering services as part of the library pre-design effort for Winsor, Weller, and Main Street. Harris is also currently working on the off-site utility engineering and the official street Plan Lines for Winsor and Weller Avenue.

Staff now proposes to amend Harris's agreement to include preparation of a drainage study for the library, garage parking structure and the vacant City owned parcels on the west side of Main Street, preparation of an official Plan Line for the portion of Carlo Street between Winsor and Main Street, and utility engineering services for the design of the relocation of existing City utilities in Main Street from Weller Avenue to Carlo Street. Staff has negotiated the scope of work and the fee for these professional services. The work is proposed on a time and materials

basis with a not-to-exceed amount of \$43,000. Funds are available in the project budget for this amendment.

RECOMMENDATION: Authorize the City Manager to execute the agreement amendment with Harris and Associates in the amount not to exceed \$43,000 subject to approval as to form by the City Attorney.

RA9. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

1. REQUEST FOR DONATION: CHILD SPREE PROGRAM SPONSORED BY MILPITAS KIWANIS AND MERVYN'S: MAYOR ESTEVES

BACKGROUND: Prior to the beginning of school each fall, the Child Spree Program, sponsored by the Kiwanis Club of Milpitas and Mervyn's, provides the opportunity for underprivileged children to purchase school clothes and supplies. Mike Mendizabal, President the Milpitas Kiwanis Club, has sent a letter requesting a City donation of \$1,500 to the Child Spree Program. Copy of request is included in Council's agenda packet. For the past several years the City has contributed to this event in varying amounts -- \$500, \$1,000, or \$1,500.

Sufficient funds are appropriated in the Council's Community Promotions Budget for FY04/05, and currently no other requests have been received.

RECOMMENDATION: Consider donation to the Child Spree Program from City Council's Community Promotions Fund

*** 2. APPROVE THE MAYOR'S APPOINTMENT TO THE MOBILE HOME PARK RENTAL REVIEW BOARD: MAYOR ESTEVES**

BACKGROUND: Mayor Esteves is recommending the appointment of Sandeep Chahal to an existing vacancy on the Mobile Home Park Rental Review Board for a term expiring June 2006. Included In the Council's agenda packets are copies of current applications for this board.

RECOMMENDATION: Approve the Mayor's appointment of Sandeep Chahal to the Mobile Home Park Rental Review Board for a term expiring June 2006.

3. REVIEW OF JULY 4TH SPORTS CENTER PROGRAMS AND FEES: COUNCILMEMBER POLANSKI (STAFF CONTACTS: BONNIE GREINER, 586-3227 AND KATHLEEN YURCHAK, 586-3209)

In response to Councilmember Polanski's request, this item has been placed on the agenda to review the admission fees for the July 4th Pool Party and Fireworks Show at the Sports Center.

Pool Party

The "Waving the Red, White and Blue" Pool Party will be held on Sunday, July 4th from 1-5pm at the Milpitas Sports Center. Admission for the party has been \$2.00 and is consistent with normal summer Recreation Swim fees. Last year, 618 people attended the ever popular pool party to listen to music, play games, and swim, generating \$1,236. Staff is anticipating similar numbers this year, due to occupancy regulations set for the pools and pool deck. Staff is recommending that this year the admission fees be applied to the very successful Recreation Assistance Program (RAP) which assists families, who qualify, participation in year-round Recreation Services programs and activities. To date, this beneficial program has aided 66 households from families with children to seniors, who normally would not be able to afford participation in recreation activities and/or classes. The budget for the Pool Party is \$1,000.

Fireworks Show

This year the “Red, White and Boom” 4th of July festivities will begin at 6:00pm with two live bands – Band Camp and Flashback – and performances by the Teen Talent Show winners. During the evening, there will be “walk around” entertainment for children and their families, including face painters, jugglers, clowns, and balloon artists. Staff has also secured the following food vendors to participate and sell food from 6-9pm: Subway Sandwiches, the Kiwanis Club, the Lions Club, Chili’s Restaurant, Baskin Robbins, Big Boyz BBQ, Café Romeo, and possibly the Rotary Club. All vendors will retain their food sale profits. This year’s Fireworks Show will begin at 9:30pm with the dual themes of: “A Tribute to Heroes” and “Celebrating 50 Years of Milpitas”. The display has been increased from last year’s 18-minute show to 23 minutes as custom pyrotechnics have been added to commemorate the City’s 50th Anniversary, and an additional 100 shells have been added to the finale.

Last year, 2003, was the first year a \$2.00 admission was charged for the 4th of July Fireworks Show. The show attracted 6,779 participants – 2,368 adults and 4,411 youth under the age of 12 – generating \$4,736. The admission fee which was charged to individuals 12 years old and above was a useful mechanism to accurately track the number of firework attendees and – in a small way – to help offset the costs of the event. Event expenses last year were \$20,000.

Staff received very few negative comments regarding the admission fee and if patrons chose not to pay, they had the opportunity to view the Fireworks display from Cardoza Park or the Sports Center parking lot. Many participants even commented that they enjoyed the show, stating it was the best fireworks they have seen and would pay more for a show of this quality.

Staff is anticipating crowds similar to those of last year, with 5,000-7,000 spectators. It is further anticipated that a \$2 admission fee, which – this year – is recommended for attendees 16 years old and above, would generate approximately \$4,200, which would also be applied to the Recreation Assistance Program (RAP). The total cost of this year’s July 4th event is \$28,146.

RECOMMENDATION: Receive staff report and direct staff to continue the \$2.00 admissions fees for the July 4th events with proceeds going to support and benefit the Recreation Assistance Program in the Recreation Services budget for FY2004/05.

Community Advisory Commission

4. CONSIDER ADDITIONAL INFORMATION FROM THE COMMUNITY ADVISORY COMMISSION REGARDING RECOMMENDATION TO INCREASE THE MAYOR’S TERM LENGTH FROM TWO TO FOUR YEARS (STAFF CONTACT: TAMBRI HEYDEN, 586-3280)

BACKGROUND: At the December 2, 2003, City Council meeting, the Community Advisory Commission (CAC) presented its recommendation to increase the Mayor’s term length from two to four years. After Council discussion of the recommendation, the Council requested the CAC to re-evaluate their recommendation after studying the correlation with existing term limits. In addition, the Council requested the CAC obtain more public input on the proposed change in term length and return to the Council with suggested ballot language that would make the relationship between term length and term limits clear to voters.

After conducting a survey of 92 individuals and holding a CAC public hearing on April 7, 2004, the CAC continues to recommend an increase in the Mayor’s term length from two to four years. The ballot language the CAC has drafted is as follows:

1. Beginning in 2008, shall the Mayor’s term length be extended from two years to four years, the same as other members of the City Council?

and

2. If you voted Yes for Question #1, beginning in 2008, shall the Mayor be limited to two consecutive, 4-year elective terms?

The City Attorney has reviewed the draft ballot language, and suggests the following minor rewording of the first question to comply with Government Code requirements related to extending the term of office for a directly-elected Mayor. In the event the City Council decides to include both CAC recommendations on the November ballot, the exact wording of question 2 may also require some minor adjustment to correctly modify the existing Municipal Code provisions related to term limits, but the substance of the recommendation would remain the same.

With regards to the first question, the revised question would read:

“Beginning with the start of the Mayor’s term of office in 2008, shall the term of office of Mayor be increased from two to four years, the same term of office as other members of the City Council?”

As an alternative, the City Council may also desire to have the ballot question read:

“Beginning with the start of the Mayor’s term of office in 2008, shall the term of office of Mayor be increased from two to four years?”

Under either alternative, the concept that the four-year term is the same as other councilmembers could be expressed in the ballot title and summary and the impartial analysis for the ballot measure.

The CAC will be providing a presentation of their additional work at the Council meeting. The CAC’s PowerPoint slides, updated report, survey and survey results, as well as an editorial from the *Milpitas Post* that ran three months ago are included in the Council’s agenda materials. If the City Council decides to place these measures on the November 2004 ballot, staff will prepare the final materials necessary and present these to the City Council for action at the same meeting the City Council takes action to call for a consolidated election. These final materials include the resolution placing the measure on the ballot and specifying the exact ballot question, the ballot title and summary and the impartial analysis. These materials would be presented to the City Council at the second meeting in June or the July meeting.

RECOMMENDATION: Consider the CAC’s recommendation and provide direction to staff regarding whether to move forward with including these ballot measures on the November election ballot.

XV. UNFINISHED BUSINESS (NONE)

XVI. NEW BUSINESS

5. **ADOPT RESOLUTION APPROVING THE CITY OF MILPITAS CODE OF ETHICS AND BEHAVIORAL STANDARDS DOCUMENT; ADOPT RESOLUTION REVISING AND RENAMING STANDARD OPERATING PROCEDURE NO. 16-1 (FORMERLY KNOWN AS THE CODE OF ETHICS); REVIEW AND APPROVE THE IMPLEMENTATION PLAN FOR THE CITY OF MILPITAS CODE OF ETHICS; AND SET DATES FOR A CITY COUNCIL SPECIAL MEETING FOR ETHICS CODE TRAINING AND A CAMPAIGN CANDIDATES TRAINING WORKSHOP (STAFF CONTACT: TAMBRI HEYDEN, 586-3280)**

BACKGROUND: After input from the public, city boards and commissions, city management and senior staff at four code preparation workshops, review by the Ethics Project Steering Committee and the CAC, final drafts of the *City of Milpitas Code of Ethics* and Behavioral

Standards document are being forwarded to the Council for consideration to adopt. The Code and Standards are intended to apply to all elected and appointed officials, campaign candidates, city management, and senior staff. The Code encompasses six core values with corresponding fundamental practices that describe each value.

The Standards build on the Code by setting forth specific examples of everyday actions and decisions with are consistent with the Code and examples of behaviors that are not. Examples for city officials, as well as those for candidates are provided. A resolution for adoption that attaches the Code and Standards are included in the Council's agenda materials.

A second resolution is included in the Council's agenda materials to adopt revisions to the existing Standard Operating Procedure (SOP) No. 16-1, formerly called the "Ethics Code", that was last revised by Council on March 17, 1976 through Resolution No. 2714. This SOP is being renamed the "Code of Conduct for Public Officials" and applies to all elected and appointed officials and city employees – campaign candidates are excluded. In the new City of Milpitas Code of Ethics, all elected and appointed officials and campaign candidates are included, but non-senior staff level employees are excluded.

As per the ethics project contract, the *Implementation Plan for the City of Milpitas Code of Ethics* has been prepared and approved by the Steering Committee and CAC for consideration of approval by the Council together with the Code and Behavioral Standards. The purpose of the attached implementation plan is to identify educational methods and outline how to monitor the effectiveness of the *City of Milpitas Code of Ethics* and program. The plan recommends the following implementation measures:

1. When possible, conducting moments of reflection at the end of Council, Commission, and staff meetings assessing how well the Code was practiced at the meeting.
2. Publicly recognizing at the annual Board and Commission dinner those who have been extraordinary role models of the Code's values.
3. Holding a campaign candidates workshop on how to conduct a political campaign consistent with the Code.
4. Conducting a post-election assessment session in December/January to evaluate how well Code promises were kept, to be followed by CAC-sponsored assessment sessions after all future elections that would precede evaluation and updating of the Code and ethics program.
5. Seeking partners who can also hold candidates accountable.
6. Discouraging use of the County Ethics Foundation.
7. Securing an "ad watch" program sponsor, sponsor to host a debate and/or sponsor of web space for candidates to respond to opponent's claims made within the last few days of the election.
8. Producing a public information program to educate voters on how to determine whether a candidate is ethical.
9. Requiring candidate disclosure of all their lobbyists to whom they've paid \$500 or more to communicate with city officials to influence city legislation or decisions.
10. Considering programs related to campaign funding.
11. Instituting a process for complaints that would be adjudicated by a paid, team of ethics evaluators with the authority to take the appropriate action as per codified sanctions.
12. Requiring all Council members to attend a two-session ethics training series.
13. Requiring all senior management staff to attend a two-session ethics workshop series.
14. Requiring all boards and commissioners to attend a one-session ethics workshop.

RECOMMENDATION:

1. Adopt the resolution approving the City of Milpitas Code of Ethics and the Behavioral Standards document;

2. Adopt the resolution revising and renaming Standard Operating Procedure No. 16-1 (formerly known as the Code of Ethics);
3. Review and approve all implementation measures (1 – 14 above) recommended in the Implementation Plan for the City of Milpitas Code of Ethics;
4. Set the date of July 20, 2004 at 6:30 p.m. as a City Council special meeting for Ethics Code training; and
5. Set the date of August 19, 2004 at 7:00 p.m. as a campaign candidates training workshop

6. CONSIDERATION OF PROPOSED STANDARD OPERATING PROCEDURE/ PROTOCOL SETTING FORTH PROCEDURES AND POLICIES FOR MAKING CITY RECORDS AVAILABLE TO THE PUBLIC AND PROVIDING NOTICE AND ACCESS TO PUBLIC MEETINGS (STAFF CONTACT: STEVE MATTAS, 586-3040)

BACKGROUND: At the City Council meeting on March 16, 2004, Councilmember Gomez asked the City Council to consider adopting a Statement of Policy and General Rules to guide the City Attorney in the development of a protocol for public access to meetings and for the disclosure of public records. During the meeting, the City Council discussed the issue and provided the City Attorney with direction to 1) collect and assemble comparative data on other Bay Area jurisdictions that have adopted similar policies or ordinances; 2) to come up with some hypothetical situations to illustrate what impacts the policy might have on the City and the Council's deliberative process; and 3) to draft a model policy based on Councilmember's Gomez' proposed Statement of Policy and General Rules.

The attached packets contain four documents. The first consists of a brief description of existing state law governing the release of public records and access to meetings of local legislative bodies under the California Public Records Act, the Ralph M. Brown Act, and other relevant state and federal laws, including an analysis of points where the proposed policy would provide greater access to meetings and records than is provided for under existing law. The second document is a brief memorandum presenting hypothetical situations to illustrate how the proposed policy might impact the City and deliberative processes of the Council. The third is a matrix presenting comparative data on Bay Area jurisdictions. The fourth is a model policy based on Councilmember Gomez' proposed Statement of Policy and General Rules.

RECOMMENDATION: Consider the information provided and then provide direction to staff as to how the Council desires to proceed.

7. CONSIDERATION OF DEVELOPMENT OF A CITY COUNCIL HANDBOOK INCLUDING THE TOPICS THAT THE CITY COUNCIL MAY DESIRE TO INCLUDE IN THE HANDBOOK (STAFF CONTACT: STEVE MATTAS, 586-3040)

BACKGROUND: At the March 16, 2004, City Council meeting, the City Council requested that staff provide the City Council with examples of City Council Handbooks used in other communities. Although each handbook differs in some respects, a City Council Handbook or Guide generally contains information that councilmembers, especially new councilmembers and the public, find helpful in understanding various issues associated with the role of a city councilmember. To date, my staff has located examples from some other cities including San Leandro, South San Francisco, Petaluma and Fresno and we are surveying other cities in Santa Clara County to determine whether they have created similar documents. As these documents tend to be lengthy, we will under separate cover provide copies for the City Council to review and will also provide a public review binder which will be available through the City Clerk's office.

In general, these types of documents cover topics such as: (1) the role of the Mayor and City Council, (2) the form of government (i.e., Council/Manager) under which the City operates, (3) terms of office, (4) the role of City Councilmember serving as the City's representative in other government agencies, (5) a general description of the various boards on which a councilmember may sit, (6) a general description of the duties of the boards and commissions of the City and the

selection procedures for those commissioners, (7) guidelines related to public participation in City Council meetings, (8) a general description of the process for conducting City Council meetings including rules of order and issues related to maintaining a quorum, (9) a general description of the forms of motions that may be made by a councilmember during a meeting, (10) a general description or incorporation of city council adopted policies that apply to councilmembers, (11) a general description of Brown Act and Political Reform Act requirement, (12) a general description of the primary documents involved in the governments of the City including documents such as the General Plan and Municipal Code. As is evident from a review of the sample documents, the items included in a City Council Handbook and the format thereof varies greatly and is guided by the direction of the City Council in each community.

RECOMMENDATION: Consider the sample documents provided and if desired by the City Council, provide direction to develop a City Council handbook for use in Milpitas.

* **8. DENY FEE WAIVER REQUEST FOR THE PUNJABI SAHIT SABHA LITERARY FUNCTION ON AUGUST 8, 2004, IN THE AMOUNT OF \$494 (STAFF CONTACT: KATHLEEN YURCHAK, 586-3209)**

BACKGROUND: Staff has received a request from Amarjit Dardi, General Secretary of Punjabi Sahit Sabha, a non-profit group, requesting a fee waiver for their August 8, 2004, rental of the Milpitas Community Center Auditorium in the amount of \$494.00. Punjabi Sahit Sabha is offering a Literary Function beginning at 8:00am to 9:00pm (13 hours). The per hour rental fee for a resident, non-profit group is \$38.00, totaling \$494. The \$15 application fee and \$150 deposit has been paid. Included in the Council's packet are copies of Mr. Dardi's fee waiver request, a copy of his Non-profit Indoor Facility Use Application and Facility Permit.

As of May 2003, Punjabi Sahit Sabha has rented either the Community Center's Room 7/8 or Auditorium 12 times and has only paid the application fees, totaling \$90. To date, rental fees have not been applied to the past 12 rentals, per the City's Facility Use Rules and Regulations, which allows "free" rentals for non-profit organizations, who meet the City's guidelines. In an effort to be fiscally responsible and to follow the established City's Facility Use Rules and Regulations, it is recommended that Mr. Dardi's request be denied.

RECOMMENDATION: Deny fee waiver request for the Punjabi Sahit Sabha Literary Function on August 8, 2004, in the amount of \$494.

* **9. REQUEST AUTHORIZATION TO FLY TREE CITY USA FLAG AT THE PUBLIC WORKS BUILDING (STAFF CONTACT: CAROL RANDISI, 586-2601)**

BACKGROUND: Milpitas has been awarded the designation of "Tree City USA" by the National Arbor Day Foundation for its commitment to establishing and maintaining an urban "community forest." This is the second year Milpitas has received this national recognition. According to John Rosenow, president of the National Arbor Day Foundation, "It shows the people of Milpitas value trees for the beauty, grace, comfort, and practical blessings they bring."

When a community is designated as a Tree City USA, the National Arbor Day Foundation allows that community to display this title in a number of ways including posting signs at its city limits and flying a Tree City USA flag. This physical manifestation of the designation as a Tree City USA is typically viewed positively by the public.

Staff is requesting authorization to fly the Tree City USA flag at the Public Works building. The flag would be flown according to proper protocol under the City flag. The flag has a white field with a green tree and lettering. A Tree City USA flag is visible along Route 101 in front of the City of Mountain View's maintenance facility.

RECOMMENDATION: Authorize staff to fly the Tree City USA flag at the Public Works building.

XVII. ORDINANCES (NONE)

XVIII. RESOLUTIONS

- * 10. ADOPT A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM FOR MAIN SEWAGE PUMP STATION SITE IMPROVEMENTS, PROJECT NO. 6079, (STAFF CONTACT: MARK ROGGE, 586-3403)**

BACKGROUND: An Initial Study and Mitigated Negative Declaration (IS/MND) were prepared for the Main Sewage Pump Station Site Improvements, Project 6079 in accordance with the California Environmental Quality Act. The project includes demolition of abandoned sewage treatment facilities, site cleanup, replacement of the operations building, drainage improvements, paving and related site improvements to be constructed in two phases. The IS/MND was circulated for public review from March 26, 2004 to April 25, 2004. Copies were delivered to the State Clearinghouse of the Governor's Office of Planning and Research for review by state agencies. The public review process was advertised and the project site was posted. Upon close of the review period, one letter was received from the Santa Clara Valley Water District. The letter contained minor comments that have been addressed in the IS/MND. The Initial Study/Mitigated Negative Declaration has been finalized and is suitable for adoption.

RECOMMENDATION: Adopt a resolution adopting a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Main Sewage Pump Station Site Improvements, Project No. 6079.

- * 11. ADOPT RESOLUTION RELATING TO STATEMENTS OF QUALIFICATIONS OF CANDIDATES IN MUNICIPAL ELECTIONS (STAFF CONTACT: GAIL BLALOCK, 586-3001)**

BACKGROUND: In June 1998, the City Council adopted Resolution No. 6778 relating to Candidates Statements of Qualifications printed in the sample ballot for Municipal Elections. This resolution sets forth the number of words allowed in a Candidate's Statement and that the candidate is responsible for the cost of printing and mailing the statement and translating the statement into Spanish. Since the City's last municipal election in November 2002, the Federal Voting Rights Act has mandated that Santa Clara County make election materials available in Chinese, Tagalog, and Vietnamese in addition to Spanish. A resolution replacing Resolution No. 6778 has been prepared incorporating this change, and a copy is included in the Council's agenda packets.

RECOMMENDATION: Adopt resolution relating to statements of qualifications of candidates in municipal elections.

- * 12. ADOPT A RESOLUTION TO RELEASE UNCLAIMED CHECKS IN ACCORDANCE WITH SOP NO. 26-1 (STAFF CONTACT: DANTE D. ONG, 586-3132)**

BACKGROUND: According to City of Milpitas' Standard Operating Procedures 26-1 which conforms with California Government Code Section No. 50055, unclaimed checks of less than \$15, or any amount if the depositor's name is unknown, which remain unclaimed for more than one year may be transferred to the General Fund by the City Council. Attached is a list of unclaimed checks of less than \$15, which remain unclaimed for more than one year.

RECOMMENDATION: Staff recommends that the Council adopt a resolution to transfer a total of \$80.06 unclaimed checks per the attached list to the General Fund in accordance with Standard Operating Procedures 26-1.

- * 13. **ADOPT RESOLUTION OF INTENTION TO LEVY ASSESSMENTS FOR FISCAL YEAR 2004-2005, PRELIMINARILY APPROVING THE ANNUAL ENGINEER'S REPORT AND PROVIDING FOR NOTICE OF PUBLIC HEARING: LANDSCAPING AND LIGHTING MAINTENANCE DISTRICT NO. 95-1, MCCARTHY RANCH, PROGRAM NO. 9474, (STAFF CONTACT: MEHDI KHAILA, 586-3328)**

BACKGROUND: Landscaping and Lighting Maintenance Assessment District (LMD) No. 95-1, provides for servicing and maintaining the public landscaping and additional lighting along North McCarthy Boulevard and Ranch Drive Gateway Improvements. On May 18, 2004, the City Council directed the City Engineer to prepare an annual engineer's report for LMD 95-1. It is now necessary for the Council to preliminarily approve the Annual Report and set the date of June 15, 2004 for a public hearing. Upon conclusion of the public hearing on June 15, 2004, and subsequent City Council approval of the Annual Engineer's Report, the assessment for the work will be added to the tax bills for those property owners included within the boundaries of the District.

RECOMMENDATION: Adopt Resolution preliminarily approving the Annual Engineer's Report and providing for the notice of public hearing.

- * 14. **ADOPT RESOLUTION OF INTENTION TO LEVY ASSESSMENTS FOR FISCAL YEAR 2004-2005, PRELIMINARILY APPROVING THE ANNUAL ENGINEER'S REPORT AND PROVIDING FOR NOTICE OF PUBLIC HEARING: LANDSCAPING AND LIGHTING MAINTENANCE DISTRICT NO. 98-1, SINCLAIR HORIZON, PROGRAM NO. 9489, (STAFF CONTACT: MEHDI KHAILA, 586-3328).**

BACKGROUND: Landscaping and Lighting Maintenance Assessment District (LMD) No. 98-1, provides for servicing and maintaining the public landscaping along Sinclair Frontage Road, Los Coches and Berryessa Creeks abutting the Sinclair Horizon residential subdivision. On May 18, 2004, the City Council directed the City Engineer to prepare an annual engineer's report for LMD 98-1. It is now necessary for the Council to preliminarily approve the Annual Report and set the date of June 15, 2004, for a public hearing. Upon conclusion of the public hearing on June 15, 2004, and subsequent City Council approval of the Annual Report, the assessment for the work will be added to the tax bills for those property owners included within the boundaries of the District.

RECOMMENDATION: Adopt Resolution preliminarily approving the Annual Engineer's Report and providing for the notice of public hearing.

XIX. BIDS AND CONTRACTS

- * 15. **APPROVE AND AUTHORIZE RECREATION SERVICES TO ENTER INTO A CONTRACT WITH THE MILPITAS UNIFIED SCHOOL DISTRICT FOR TRANSPORTATION SERVICES FOR SUMMER 2004 (STAFF CONTACT: DALE FLUNOY, 586-3228)**

BACKGROUND: Recreation Services has contracted with the Milpitas Unified School District for transportation services for the City's Camp Stay & Play Program over the past six years. The Milpitas Unified School District provides the most economic transportation services within the surrounding area. The Milpitas Unified School District has agreed to provide transportation for the City of Milpitas at a rate of \$40.00 per hour per bus with no additional cost for mileage.

The School District will provide transportation for a total of ten (10) off-site trips to accommodate a total of 110 campers and 10 Recreation staff during Summer 2004. The field trip locations include: The Tech Museum, Bonfante Gardens, Monterey Bay Aquarium, Santa Cruz Beach Boardwalk, San Francisco Zoo, Manteca Waterslides, Marine World, Raging Waters, and

Great America. This agreement has been approved to form by the City Attorney and would be valid from June 21, 2004, through August 13, 2004.

This contract would not exceed \$15,000.00. Funds have been approved in the 04-05 Recreation Services operating budget.

RECOMMENDATION: Approve agreement between the City of Milpitas Recreation Services and the Milpitas Unified School District for transportation services for Camp Stay & Play Summer 2004, in the amount not to exceed \$15,000, subject to approval as to form by the City Attorney.

*** 16. APPROVE PLANS AND SPECIFICATIONS AND AUTHORIZE THE ADVERTISEMENT FOR BID PROPOSALS: 2004 STREET RESURFACING, PROJECT NO. 4182 (STAFF CONTACT: STEVE ERICKSON, 586-3414)**

BACKGROUND: Plans and specifications for the subject project have been completed in accordance with the approved five-year Capital Improvement Program (CIP). The project provides roadway reconstruction for Yosemite Drive from Sequoia to Temple and Falcato Drive from Temple to Edsel; asphalt concrete overlay for Jacklin Road from Park Victoria to I-680 Ramp East, Park Victoria Drive from Big Basin Way to Landess Avenue and Calaveras Blvd. to Canton Drive, Landess Avenue westbound lanes from Park Victoria to Dempsey, McCarthy Blvd. from Murphy Ranch to Bellew, Bellew Drive from McCarthy to Barber and Barber Lane from Bellew to Alder; slurry seal of Jacklin Road from Milpitas to I-680 Ramp West, Petersburg Drive, Bliss Avenue, Mesa Verde Drive, Shiloh Avenue, Seacliff Drive, and Barber Court; and base repair for Yosemite Drive from Temple to Hillview. The Engineer's estimated construction cost for the work is approximately \$1,800,000. A copy of the project plan title sheet is included in the Council's agenda packets. Complete plans and specifications are available for review in the office of the City Engineer.

RECOMMENDATION:

1. Approve plans and specifications.
2. Authorize advertising for bid proposals.

*** 17. REQUEST COUNCIL AUTHORIZATION: RENEWAL OF URBAN SEARCH AND RESCUE (USAR) PROGRAM PARTICIPATION AGENCY AGREEMENT (STAFF CONTACT: BILL WEISGERBER, 586-2811)**

BACKGROUND: Since January 14, 1999, the Milpitas Fire Department has been accepted as a Participating Agency in the Federal Emergency Management Agency (FEMA) Urban Search and Rescue (USAR) Program. The sponsoring agency for this team, known as: California Task Force-3 (CA-TF3); is The Menlo Park Fire Protection District.

As a sponsoring agency, The Menlo Park Fire Protection District solicited regional participants for their FEMA Urban Search and Rescue (USAR) team. The Milpitas Fire Department's compliment of equipment and trained personnel allowed us to take advantage of this opportunity--adding value to our preparation for local disasters, terrorist attacks, or providing assistance to neighboring communities with similar needs. By including our resources as an integral component of a larger USAR response operation, the Milpitas Fire Department personnel are afforded unsurpassed USAR experience and support-- otherwise not realized through normal requests for mutual-aid response.

The Milpitas Fire Department is accepted into the program for one Rescue Group position (requiring three personnel to provide coverage, on three shifts); and one single resource Planning Section Deputy (requiring one person). The department's obligation during any activation request, for State or Federal deployment is reimbursable through FEMA and is similar to that of the State OES Mutual Fire Aid system, essentially as follows:

- Response to rendezvous point in Menlo Park within 3 hours;
- Fire Chief's discretion in determining whether to fill or decline request—based on local circumstances;
- Back-fill of personnel incumbent upon participating agency;
- Reimbursement to agency for personnel costs through FEMA—post-incident

Participation in this program holds a requirement for 26 hours of external training per year, per team member. The estimated maximum personnel cost for training hours is \$5,000 per year, which has been included in the department budget. Additionally, there is a program requirement for a 22-hour compliment of in-service training, which is currently incorporated into the Milpitas Fire Department annual training calendar.

Included in the Council's packet is a copy of the Memorandum of Agreement renewal, as a FEMA Participating Agency, with the Menlo Park Fire Protection District.

RECOMMENDATION: Authorize City Manager to execute a renewal contract with the Menlo Park Fire Protection District, as a Participating Agency in the FEMA California Task Force-3, Urban Search and Rescue Program, subject to approval as to form by the City Attorney.

*** 18. APPROVE CONTRACT WITH MARY KROST & ASSOCIATES TO PROVIDE SAFETY TRAINING FOR CITY EMPLOYEES (STAFF CONTACT: CHERIE ROSENQUIST, 586-3082)**

BACKGROUND: The purpose of safety training is to prevent and/or reduce worker injuries. Training can also reduce worker's compensation costs while increasing Citywide efficiency and productivity and will provide a safer workplace environment for our employees.

Krost & Associates has extensive experience and expertise in reducing workplace injury through customized safety training with an emphasis on body mechanics.

The training will be provided to more than 80 employees over six seminars including customized video demonstrations. The program also includes follow-up reviews. The total cost of the training services is \$18,279.00. Funding is included in the fiscal year 03/04 budget.

RECOMMENDATION: Authorize the City Manager to execute an agreement to provide safety training with Mary Krost & Associates in an amount not to exceed \$18,279.00, subject to approval as to form by the City Attorney.

*** 19. APPROVE SENIOR NUTRITION AMENDED CONTRACT WITH COUNTY OF SANTA CLARA (SOCIAL SERVICES) (STAFF CONTACT: KATHLEEN YURCHAK, 586-3209)**

BACKGROUND: The City of Milpitas has contracted with the County of Santa Clara in implementing the Senior Nutrition Program since March 1978. The Program serves seniors, sixty years and older, 249 days per year, an average of 68 meals per day, for a total of 17,025 meals per year. Enclosed in the Council's agenda packet is a copy of the Amended Contract between the County of Santa Clara (Social Services) and the City of Milpitas. Amended items include, Article 1, Section B, Term of Contract, which has been revised to reflect FY 2004/05 terms, extending contract one year to commence on July 1, 2004 and expire on June 30, 2005, unless terminated earlier or otherwise amended; and Article 1 Section C, Maximum Financial Obligation, which has been revised to reflect FY 04/05 terms. The total budget for the FY 2004/05 Nutrition Program, shared by the City of Milpitas and Santa Clara County, is \$103,698. As outlined in the County's contract, the City's contribution to the program is 50% of the budget or \$51,849, which is included in Recreation Services' operating budget.

RECOMMENDATION: Approve the amended contract with County of Santa Clara (Social Services) for July 1, 2004, through June 30, 2005. The total amount of this contract is \$103,698, with the City and County each responsible for one half of the amount or \$51,849, not to exceed

\$3.55 per meal. Sufficient funds have been approved in the FY 2004/05 budget and contract is subject to approval as to form by the City Attorney.

*** 20. AUTHORIZE CITY MANAGER TO EXECUTE CONTRACT: WILDLIFE CENTER OF SILICON VALLEY ANIMAL CONTROL SERVICES FOR THE CITY OF MILPITAS, (STAFF CONTACT: FELIX RELIFORD, 586-3071)**

BACKGROUND: Since the establishment of the previous cost sharing agreement in October 1993, the cities within Santa Clara County have received animal wildlife services free of charge from the Wildlife Center of Silicon Valley (WCSV). Wildlife animals were dropped off at the Humane Society and held until the Wildlife Center staff transported them to their center for care and treatment. The animals are then released back into the wild.

Because of the lack of funding, Wildlife Center of Silicon Valley, Board of Directors decided several years ago (effective September 1, 1999), to eliminate free services to those cities that have chosen not to pay for them. In the past, WCSV requested that cities pay 60% of their total projected budget of \$310,591. This year the percentage of funding request from cities has decreased to 40% with WCSV bearing the majority (60%) of the cost. Based on the 199 wild animals the Wildlife Center has received from Milpitas residents in the past year, Milpitas cost in the coming year would be 2% of \$310,591 or \$6,336. There is no increase in the WCSV fees from last year and the City's total fees have decreased from 2.4% to 2% of WCSV's total costs.

Included in the Council's agenda packet are the contract agreement and letters from the Wildlife Center of Silicon Valley.

RECOMMENDATION: Authorize the City Manager to execute a contract agreement with the Wildlife Center of Silicon Valley to provide wildlife services in the amount not to exceed \$6,336, subject to approval as to form by the City Attorney.

*** 21. AUTHORIZE THE CITY ENGINEER TO EXECUTE A CONTRACT CHANGE ORDER: PIEDMONT ROAD BIKE LANE AND SIDEWALK IMPROVEMENTS AT ST. JOHN'S CEMETERY (PROJECT NO. 4214) (STAFF CONTACT: STEVE ERICKSON, 586-3414)**

BACKGROUND: The City Council awarded this project to Grade Tech, Inc. on February 17, 2004, and construction is underway. The completed project will provide new curb, gutter, sidewalk and bike lane along the west side of Piedmont Road in front of St. John's Cemetery. This project will also provide new pavement on Piedmont Road between Yosemite Drive and Aguilar Court and the anticipated completion date is August 30, 2004.

Staff has reviewed the roadway pavement condition and recommends that this section of Piedmont Road be resurfaced with a thin layer of asphalt concrete. Staff has negotiated a fee not to exceed \$56,435 with the Contractor for this additional work, and the approval of a contract change order is requested. Sufficient funds are available in the project budget for this change order.

RECOMMENDATION: Authorize the City Engineer to execute the Contract Change Order for Grade Tech, Inc. in the amount not to exceed \$56,435, subject to approval as to form by the City Attorney.

*** 22. APPROVE AGREEMENT AMENDMENT: 4 LEAF INC., SILICON VALLEY INTELLIGENT TRANSPORTATION SYSTEM (ITS) PROJECT NO. 4219 (STAFF CONTACT MIKE MCNEELY, 586-3301)**

BACKGROUND: 4 LEAF Inc. is currently providing Construction Management and Inspection of the Silicon Valley Intelligent Transportation System (ITS) project. This multi-jurisdictional project will extend fiber optic communication lines between Traffic Management Centers in

Fremont, Milpitas and Caltrans District Office in Oakland. Closed Circuit Television cameras are also being installed along the North – South corridors between Milpitas and Fremont to monitor traffic congestion. All costs for this project are reimbursed by a State and Federal grant fund.

Additional services are needed because of delays in completing the construction contract due to factors discussed in the memo included in the Council's agenda packet. It is expected that the additional costs incurred by the City to manage and inspect the project will be collected from the contractor in the form of liquidated damages. An agreement amendment with 4 LEAF Inc. is proposed for these additional services with a not to exceed amount of \$17,500, which is considered reasonable for the scope of work. There are sufficient funds in the project budget to cover this additional expense.

RECOMMENDATION: Authorize the City Manager to execute the agreement amendment with 4 LEAF Inc., in the amount of \$17,500, subject to approval as to form by the City Attorney.

*** 23. AUTHORIZE CITY MANAGER TO EXECUTE AGREEMENT AMENDMENT:
OVERLAND PACIFIC & CUTLER, MAIN SEWAGE PUMP STATION
IMPROVEMENTS, PROJECT NO. 6079 (STAFF CONTACT GREG ARMENDARIZ,
586-3401)**

BACKGROUND: On April 6, 2004, the City Council awarded a consultant contract to Overland, Pacific & Cutler, Inc. for services relating to property acquisitions and tenant relocations for the Midtown Parking Structure and the Abel Street Right Turn Lane projects.

Staff recommends that Overland, Pacific & Cutler perform additional services relating to a land transaction under consideration in the vicinity of the main sewage pump station. The pump station site is proposed as a location for Public Works maintenance activities that will be displaced by construction of the new library and midtown parking structure. A land transaction is being considered to provide improved vehicular access to the pump station site. An agreement amendment is proposed for additional real estate services by Overland, Pacific & Cutler relating to this transaction. Staff has negotiated a scope and fee for these services not to exceed \$30,000.00, which is considered reasonable for the work. There are sufficient funds in the project budget to cover this additional expense.

RECOMMENDATION: Authorize the City Manager to execute the agreement amendment with Overland, Pacific & Cutler, Inc. in an amount not to exceed \$30,000.00, subject to approval as to form by the City Attorney

- * 24. **APPROVE BUDGET APPROPRIATION AND AUTHORIZE THE CITY MANAGER TO EXECUTE AMENDMENT TO AGREEMENT: HILTON FARNKOPF & HOBSON LLC SOLID WASTE CONTRACT EXTENSION AND RATE NEGOTIATIONS (STAFF CONTACT: DARRYL WONG, 586-3345)**

BACKGROUND: As directed by Council at the April 20 and May 18, 2004 meetings, staff is pursuing a ten-year extension to the existing solid waste contract with Browning Ferris Industries (BFI). In addition, the biennial rate negotiations will be starting shortly and more efficient styles of service will be considered. Hilton Farnkopf & Hobson LLC (HFH) successfully assisted the City with prior audit and rate negotiations with a savings to the City over \$375,000. Due to the potential complexity of the contract extension and changes in service style, staff proposes an amendment to the HFH agreement for assistance in these reviews in the amount of \$83,645. Staff has reviewed the scope of work and believes it to be reasonable. Savings in existing Solid Waste accounts of approximately \$39,000 are available and a budget appropriation of \$44,000 is requested for the remaining needed funds

RECOMMENDATION:

1. Authorize the City Manager to execute the agreement amendment with HFH, subject to approval as for by the City Attorney.
2. Approve the budget appropriation of \$44,000.

XX. CLAIMS AND DEMANDS

- * 25. **APPROVE PAYMENT REQUESTS: MISCELLANEOUS VENDORS / CONTRACTORS (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: In accordance with direction given by City Council at its August 15, 1995, meeting, Purchasing has prepared the following purchasing request over \$5,000.00 for approval:

\$25,147.43 to US Metering & Technology for the purchase of 75 water meters from ¾" to 2" in size to replenish inventory stock for the Utility Maintenance Function. This vendor is the sole distributor of Badger water meters on the west coast. (Funds are available from the Public Works Department operating budget for this purchase.)

RECOMMENDATION: Approve the purchase request.

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, JUNE 15, AT 7:00 P.M.**

CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
May 18, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

- 1. CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
(Pursuant to Government Code Section 54956.8)
Property: APN #022-08-042
Negotiating Parties: City of Milpitas and County of Santa Clara
Agency Negotiator: Thomas J. Wilson
Under Negotiation: Terms and Conditions for Disposition or Lease
- 2. CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
(Pursuant to Government Code Section 54956.8)
Property: Vacant Property N. Main Street (APN No. 2208003)
Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza
Agency Negotiators: Thomas J. Wilson and Blair King
Under Negotiation: Terms and conditions for acquisition of property
- 3. CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
(Pursuant to Government Code Section 54956.8)
Property: 163 North Main Street, APN #022-08-041
Negotiating Parties: Mid-Peninsula Housing Coalition, a California
Non-Profit Public Benefit Corporation, City of Milpitas, and Milpitas Redevelopment Agency
Agency Negotiators: Thomas J. Wilson and Blair King
Under Negotiation: Terms and conditions for disposition or lease
- 4. CONFERENCE WITH LABOR NEGOTIATOR**
(Pursuant to Government Code Section 54957.6)
Agency Negotiator: Eddie Kreisberg and Cherie Rosenquist
Employee Organization: LIUNA
- 5. CONFERENCE WITH LABOR NEGOTIATOR**
(Pursuant to Government Code Section 54957.6)
Agency Negotiator: Thomas J. Wilson
Employee Organization: Unrepresented Employees
- 6. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
(Pursuant to Government Code Section 54956.9[a])
Title: Milpitas v. Turner Construction et al.
Santa Clara County Superior Court Case No. CV008400
- 7. CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
(Pursuant to Government Code Section 54956.8)
Property: 120-150 Winsor Street and 116-130 N. Main Street
Negotiating Parties: Milpitas Redevelopment Agency and Dorothy A. & Ruth A. Winsor
Agency Negotiators: Thomas J. Wilson and Blair King
Under Negotiation: Terms and conditions for acquisition of property

- III. **CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present**
- IV. **PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. **APPROVAL OF MINUTES: May 4, 2004**
- VI. **SCHEDULE OF MEETINGS**
- VII. **PRESENTATIONS**

- **Bicycle Friendly Community Award -- Honorable Mention** -- sponsored by the League of American Bicyclists

Proclamations:

- Bike to Work Month/Day
- Memorial Day Proclamation
- Lions Eye Glass Recycle Month, sponsored by Milpitas Executive Lions Club

Commendations:

- Chris Kaldy, contributions to the production of *Chicago*
- Anne Kelly, contributions to the production of *Chicago*
- Marcia Morrow, contributions to Milpitas' youth

Certificates of Appreciation:

- Global Village sponsors:
 - Asiya Asif
 - Filipino American Association of Milpitas, Inc.
 - India Community Center
 - The Milpitas High School MEChA Club
 - Milpitas Alliance for the Arts
 - Milpitas Sister Cities Commission
 - Milpitas Vietnamese Lions Club
 - Milpitas Youth Advisory Commission
 - Nigerian Language and Cultural Institute
 - Scarab Productions
 - San Francisco Peace Corps
 - Tzu Chi Foundation
 - Vietnamese Folk Arts Institute
 - Borders Books and Music
 - Subway Sandwiches

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

- IX. **ANNOUNCEMENTS**
- X. **APPROVAL OF AGENDA**
- XI. **CONSENT CALENDAR (Items with Asterisks)**
- XII. **PUBLIC HEARINGS (NONE)**
- XIII. **JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**
 - RA1. CALL TO ORDER BY THE MAYOR**

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: May 4, 2004

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

RA5. Authorization to Execute a Memorandum of Understanding Between KB Home South Bay, Inc., Milpitas Redevelopment Agency, City of Milpitas, and County of Santa Clara to Provide for Affordable Housing on the Elmwood Property and to Fund a Senior Affordable Project in the Vicinity of 163 North Main (Staff Contact: Blair King, 586-3060)

RA6. Adoption of a Joint Resolution of the City Council and Redevelopment Agency Authorizing the City Manager and Executive Director to Enter Into An Exclusive Negotiation Agreement with Mid-Peninsula Housing Coalition for the Development of a 98-Unit Affordable Senior Housing Project on APN #022-08-041, 163 North Main Street (Staff Contact: Blair King, 586-3060)

RA7. Approval of Memorandum of Understanding-Apton Properties, LLC Development (Staff Contact: Felix Reliford, 586-3071)

RA8. Review Progress Report on Library (Project No. 3394) (Staff Contacts: Greg Armendariz, 586-3401 and Mark Rogge, 586-3403)

***RA9. Request Council Authorization: Purchase Fire Department Apparatus that Conform to Midtown Standards (Staff Contact: Bill Weisgerber, 586-3811)**

***RA10. Authorize the City Manager to Execute an Agreement Amendment for Consultant Services: Swinerton Management & Consulting (Various Projects)(Staff Contact: Greg Armendariz, 586-3401)**

***RA11. Approve Agreement Amendment: JMH Weiss, Inc., Abel Street Midtown Improvements, New CIP Project, (Staff Contact: Greg Armendariz 586-3401)**

RA12. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

*** 1. Consider Request from Russell School for Contribution to the Leadership Program CASL Leadership Camp: Mayor Esteves**

*** 2. Support of High-Speed Rail Recommended Route: Mayor Esteves**

Arts Commission

*** 3. Review and Approve the Arts Commission's Work Plan (Staff Contact: Kathleen Yurchak 586-3209)**

XV. UNFINISHED BUSINESS

4. Consideration of Proposed Standard Operating Procedure/ Protocol Setting Forth Procedures and Policies for Making City Records Available to the Public and Providing Notice and Access to Public Meetings (Staff Contact: Steve Mattas, 586-3040)

5. **Consideration of Salary Adjustments for Unrepresented Employees (Staff Contact: Steve Mattas, 586-3040)**
6. **Odor Control Comprehensive Action Plan Update (Staff Contact: Darryl Wong, 586-3345)**

XVI. NEW BUSINESS

7. **Consider Expansion of the City's Code Enforcement Program and Direct Staff to Implement (Staff Contacts: Tambri Heyden, 586-3280 and Gloria Anaya, 586-3075)**

XVII. ORDINANCES

- * 8. **Adopt Ordinance No. 124.26 Amending Chapter 30 (Signs), Title XI, of the City of Milpitas Municipal Code, a Sign Ordinance Amendment to Increase the Number of Freestanding Signs in the Town Center Zoning District (Staff Contact: Troy Fujimoto, 586-3287)**
- * 9. **Adopt Ordinances No. 120.42, 208.39 of Chapters 1 and 2, Title VIII, and Ordinance No. 48.15 of Chapter 200, Title V Setting Utility Rates, Penalties and Service Charges for Non-Payment of Water, Sewer, and Solid Waste Collection Fees, Tampering with City Property, and Illicit Fire Use, and Updating Construction Water Program Provisions: (Staff Contact: Darryl Wong 586-3345)**

XVIII. RESOLUTIONS

- * 10. **Adopt Resolution Approving Lot Line Adjustment: Proposed Buddhist Temple Expansion at 50 South Main Street (Project No. 3120) (Staff Contact: Mehdi Khaila, 586-3328)**
- * 11. **Adopt Resolution Directing Preparation of the Annual Engineer's Report, for Landscaping and Lighting Maintenance District No. 98-1, Sinclair Horizon, Program No. 9479, (Staff Contact: Mehdi Khaila, 586-3328).**
- * 12. **Adopt Resolution Directing Preparation of the Annual Engineer's Report, for Landscaping and Lighting Maintenance District No. 95-1, McCarthy Ranch, Program No. 9474 (Staff Contact: Mehdi Khaila, 586-3328)**
- * 13. **Adopt Resolution Authorizing the City Manager to Execute an Agreement with the Franchise Tax Board Governing Participation in the Local Government Sharing Program (Staff Contact: Emma Karlen, 586-3145)**
- * 14. **Adopt Resolution Approving Agreement with the California Highway Patrol for Joint Use of Firing Range (Staff Contact: Steve Pangelinan, 586-2433)**
- * 15. **Adopt Resolution Authorizing the City Manager to Execute a Wind Up Agreement with ABAG Power (Staff Contact: Emma Karlen, 586-3145)**

XIX. BIDS AND CONTRACTS

- * 16. **Authorization to Amend the Current Agreement for the Collection and Disposal of Solid Waste with BFI Waste System of North America, Inc., in Order to Provide for Immediate Street Sweeping Services (Staff Contact: Blair King, 586-3060)**
- * 17. **Approve Subdivision Improvement Agreement, Final Map and Public Improvement Plans for Kennedy Subdivision, Kennedy Drive, Tract No. 9560 (Project No. 3159) (Staff Contact: Mehdi Khaila, 586-3328)**

- * 18. **Approve Agreement Extension for Annual HVAC Maintenance at the Police/Public Works Building (Staff Contact: Lou Zenzen, 586-3161)**
- * 19. **Approve First Amendment to the Agency Agreement for Countywide Household Hazardous Waste Collection Program (Staff Contact: Darryl Wong, 586-3345)**
- * 20. **Approve a Consultant Services Agreement with LSA Associates, Inc. for the Senior Housing and County Health Center EIR (Staff Contact: Dennis Carrington, 586-3275)**
- * 21. **Approve Permittee Dedication and Improvement Agreement with Avatamsaka Buddhist Lotus Society (Project No. 3120) (Staff Contact: Mehdi Khaila, 586-3328)**
- * 22. **Authorize the City Manager to Execute Agreement Amendment with GSS Consulting for Various CIP Projects (Staff Contact: Mark Rogge, 586-3403)**
- * 23. **Award Bid For Commercial Exercise Equipment (Project No. 8053) (Staff Contact: Lou Zenzen, 586-3161)**
- * 24. **Authorize the City Manager to Execute an Agreement with Hargis & Associates for Assistance with Police Department Senior Management Recruitments (Staff Contact: Cherie Rosenquist, 586-3082)**

XX. CLAIMS AND DEMANDS

- * 25. **Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Lou Zenzen, 586-3161)**

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, JUNE 1, AT 7:00 P.M.**

**CITY OF MILPITAS
Agenda Reports
Milpitas City Council Meeting
May 18, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard**

XII. PUBLIC HEARINGS (NONE)

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: May 4, 2004

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

RA5. AUTHORIZATION TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN KB HOME SOUTH BAY, INC., MILPITAS REDEVELOPMENT AGENCY, CITY OF MILPITAS, AND COUNTY OF SANTA CLARA TO PROVIDE FOR AFFORDABLE HOUSING ON THE ELMWOOD PROPERTY AND TO FUND A SENIOR AFFORDABLE PROJECT IN THE VICINITY OF 163 NORTH MAIN (STAFF CONTACT: BLAIR KING, 586-3060)

BACKGROUND: The four-party Memorandum of Understanding (MOU) between KB Homes, the Milpitas Redevelopment Agency, the City of Milpitas, and the County of Santa Clara details the provisions for providing affordable housing for the KB Elmwood development. In brief, the MOU requires the development of 110 deed-restricted, moderate-income home ownership units (85 condominium units, 15 townhomes, and 10 single family detached units) and a contribution of \$6 million towards the development of a 98-unit, low-income senior housing project proposed for North Main Street. This MOU will result in the development of 208 affordable units, allowing the project to achieve an approximate 30% affordability factor.

Both the City and County have policies that require the development of affordable housing. The implementation of the MOU will meet the City, County, and Agency's affordable housing goals.

KB will make available for sale 85 deed-restricted condominium units on Parcel "C" (east side of Abel) at a certain maximum sale price. The Agency will provide a \$50,000 silent-second mortgage for each of the 85 deed-restricted units. Interest on the silent-second note shall be 1% over the interest earned on Local Agency Investment Fund deposits. Interest shall accrue for three years, after which, beginning in the 4th year, 20% of the interest shall be forgiven per year until the loan is interest free in the eighth year. The loan is due upon sale. The deed restriction shall run with the property for a period of 45 years.

On the west side of Abel, 15 townhomes and 10 single family units will be deed restricted for moderate income households. These units will be sold at the identical cost of other market rate units. The Agency will provide direct subsidies, silent-second mortgages, or both to reach affordability levels.

KB shall contribute \$5 million towards the development of a 98-unit very low and low-income senior apartment project at 163 North Main Street. The County will contribute an additional \$1 million from the Agency funded infrastructure escrow account towards the development of the senior apartment. These funds, plus the Agency's reserved senior housing funds from its 1997 Tax Allocation Bond, and financial resources to be contributed from the Agency's non-profit

housing developer partner, make the development of the senior affordable apartments financial feasible.

The MOU requires that the Agency construct the senior affordable apartments within five years and six months of the close of escrow for the Elmwood property or provide the County with the \$5 million KB contribution. All research conducted by the Agency indicates that the deadline date can be met.

The Agency has sufficient resources in its affordable housing fund to provide for the silent-second program and the subsidies required.

KB has signed the agreements indicating its acceptance. The County is scheduled to consider the MOU on May 18th. The MOU will be incorporated into a Disposition and Development Agreement that is subject to Council approval prior to the sale of the property to KB.

RECOMMENDATION:

1. Adopt a Resolution of the Redevelopment Agency authorizing the execution of a Memorandum of Understanding to provide Affordable Housing on the Elmwood Property.
2. Adopt a Resolution of the City Council of Milpitas authorizing the execution of a Memorandum of Understanding to provide Affordable Housing on the Elmwood Property.

RA6. ADOPTION OF A JOINT RESOLUTION OF THE CITY COUNCIL AND REDEVELOPMENT AGENCY AUTHORIZING THE CITY MANAGER AND EXECUTIVE DIRECTOR TO ENTER INTO AN EXCLUSIVE NEGOTIATION AGREEMENT WITH MID-PENINSULA HOUSING COALITION FOR THE DEVELOPMENT OF A 98-UNIT AFFORDABLE SENIOR HOUSING PROJECT ON APN #022-08-041, 163 NORTH MAIN STREET (STAFF CONTACT: BLAIR KING, 586-3060)

BACKGROUND: In 1997, the City/Agency pledged and set aside nearly \$6 Million from its 1997 bond to fund the development of an affordable senior housing project at 163 North Main, the site of the Smith/DeVries house. On August 6, 2002, the Council reaffirmed this decision.

With the adoption of a Memorandum of Understanding (MOU) among KB, the City, the Agency, and the County, KB Homes will contribute \$5 million and the County \$1 million towards the development of a 98-unit very low and low income Senior Housing Project. The MOU sets a deadline date for the completion of the Senior Housing Project as five years and six months after the close of escrow for the Elmwood property.

Concurrent with the negotiations of the MOU, research has been underway to develop a plan to construct the senior housing project. City staff has worked closely with Mid-Peninsula Housing Coalition of Redwood City, California, a leading non-profit housing developer, to develop a feasible scenario for the development of the project. Currently, it is envisioned that the following \$20 million project could be developed:

98 Housing Units (88 1-bedroom, 10 2-bed)
Community Room/Admin - 1,490 s.f.
Retail Office Space - 2,400 s.f.
Parking Stalls -98

Mid-Peninsula has identified other sources of funding from Cal HFA Tax-exempt Bonds, Tax Credit Investor Proceeds, Federal Home Loan Bank Funds, and Mid-Peninsula equity to complete

the project-funding package for which Mid-Peninsula will be responsible. The project would be 100% affordable to very low and low-income households.

It is recommended that the Council/Agency enter into an Exclusive Negotiation Agreement with Mid-Peninsula. Mid-Peninsula is recognized as one of the outstanding affordable housing providers in the Bay Area. Since its founding in 1970, it has developed more than 5,000 affordable housing units in seven Bay Area counties, with 32 developments in Santa Clara County alone. Enclosed is additional information on Mid-Peninsula's qualifications. It is noted that the Agency's partnership with Bridge Housing in development of the Montevista Apartment project set precedent for working exclusively with a quality non-profit affordable housing developer.

The Exclusive Negotiation Period will expire November 16, 2004. Mid-Peninsula has pledged a \$5,000 non-refundable deposit. It is anticipated that a development agreement will be adopted during the term of the exclusive negotiation period. Staff will continue to work with the County of Santa Clara with regard to the development of a 55,000 s.f. County Health Clinic to the south of the senior housing development.

RECOMMENDATION: Adopt a joint Resolution of the City Council and the Redevelopment Agency to authorize the City Manager/Executive Director to enter into a period of Exclusive Negotiation with Mid-Peninsula Housing Coalition of Redwood City for the development of an affordable senior housing project on Assessor Parcel Number 022-08-041, 163 North Main Street.

RA7. APPROVAL OF MEMORANDUM OF UNDERSTANDING-APTON PROPERTIES, LLC DEVELOPMENT (STAFF CONTACT: FELIX RELIFORD, 586-3071)

BACKGROUND: Apton Properties, LLC proposes to construct a 96-unit rental apartment complex with landscaping, street improvements and 3,000 square feet of commercial development on the 2.23-acre site at the northeast corner of N. Main Street and Weller Lane. On June 17, 2003, the Redevelopment Agency authorized staff to enter into negotiations with Apton Properties, LLC to assist with the redevelopment of this site.

It is recommended that the Agency adopt a resolution approving a Memorandum of Understanding (MOU) providing a grant and loan assistance to facilitate the construction of 19 deed-restricted, affordable housing units consisting of: 9 very low income units and 10 moderate-income units. The MOU commits \$722,000 in grants, \$130,560 for a 20% reduction in City fees, and a \$378,000 construction loan to the developer for affordable housing assistance. The total value of the proposed Agency assistance in grants and loans is \$1,230,560. Sufficient low and moderate housing funds are available. The MOU will subsequently be incorporated into an Owner Participation Agreement (OPA) that will be presented to the Agency for approval concurrent with the Council consideration of the project, which is tentatively scheduled for June 2004. The MOU does not prevent the City from exercising its independent judgment required to evaluate the proposed project.

It is estimated that the proposed project upon full build out and sale will produce approximately \$156,800 annually in new tax increment. In total, the project will produce the following benefits:

- 78 construction jobs during the eighteen month period; and
- 96 new residential units of which 19 are deed-restricted, affordable units.

Included in the Council's agenda packet are an Apton Plaza Project Information Summary and a signed MOU indicating the developer's acceptance.

RECOMMENDATION: Adopt a Resolution of the Redevelopment Agency approving a Memorandum of Understanding by and between the Redevelopment Agency of the City of Milpitas and Apton Properties, LLC.

RA8. REVIEW PROGRESS REPORT ON LIBRARY (PROJECT NO. 3394) (STAFF CONTACTS: GREG ARMENDARIZ, 586-3401 AND MARK ROGGE, 586-3403)

BACKGROUND: Several elements of the library project, including environmental clearance studies, utility relocation and undergrounding, streetscape, relocation of the public works corporation yard, property acquisitions for parking garage and Midtown improvements, are advancing forward.

Proposals for the architectural design of the Library building were due and received on May 10, 2004. The next steps are to review and develop a short list based on written proposals, provide reference checks and interview the most qualified consultants.

Staff will present additional information and detail on current progress of the library project at the council meeting. The progress report will include an update on the current preliminary project schedule, current available funding, project resources, and additional information on the design architect selection process.

RECOMMENDATION: Note, Receipt and File Progress report on Library Project.

***RA9. REQUEST COUNCIL AUTHORIZATION: PURCHASE FIRE DEPARTMENT APPARATUS THAT CONFORM TO MIDTOWN STANDARDS (STAFF CONTACT: BILL WEISGERBER, 586-3811)**

BACKGROUND: In adopting the Midtown Specific Plan, Council acknowledged a new vision for residential development (realigned setbacks and street widths to create a pedestrian friendly environment), and that impacts to various municipal services resulting from the implementation of the Midtown Plan would be addressed as build-out of Midtown occurred. Density requirements of the Midtown Specific Plan, as interpreted by the development community, are resulting in narrow streets and tighter turning dimensions. These smaller turning radius and street widths are incompatible with the performance specifications of the fire department's engines and ladder truck.

In order to serve the land use configurations of Midtown area projects (e.g., Parc Place, KB Elmwood, Senior Housing, Library) and achieve the desired density configurations; fire apparatus equipment must conform to the environment rather than the environment conforming to the equipment.

A deliberate, thoughtful process by fire department staff has gone into analyzing the relationship of site designs to apparatus deployment and turning templates. Staff is recommending a ladder truck and engine that have a shorter wheelbase and tighter turning radii, for deployment in the Midtown area. These apparatus are already part of a bona fide governmental bid process and are available at a competitive bid price.

The timing of this purchase has recently become critical due to a worldwide shortage of steel, which will lead to a metal surcharge of \$24,500 per vehicle on all orders placed after May 31. However, regardless of this current impetus, it is the fire department's desire to have the apparatus in service prior to construction framing. To avoid unnecessary cost increases and expedite the timing of equipment delivery, staff recommends the Redevelopment Agency advance and appropriate funds for the purchase of these two apparatus before the June 1 metal surcharge takes effect—followed by a reimbursement from Midtown projects, at a later date. The cost estimate for each of these two apparatus is \$625,000 for the ladder truck; and \$355,000 for the engine. Included in the Council's packet is a staff report detailing the analysis and recommended apparatus.

RECOMMENDATION: Authorize the Redevelopment Agency to purchase and equip one Ladder Truck and one Fire Engine that conform to the Midtown Specific Standards.

***RA10. AUTHORIZE THE CITY MANAGER TO EXECUTE AN AGREEMENT AMENDMENT FOR CONSULTANT SERVICES: SWINERTON MANAGEMENT & CONSULTING (VARIOUS PROJECTS)(STAFF CONTACT: GREG ARMENDARIZ, 586-3401)**

BACKGROUND: On February 17, 2004, the City Council awarded a consultant contract to Swinerton Management & Consulting (SMCI) to provide professional project management services as needed to assist staff in the completion of projects for KB Homes, the County parcels surrounding the Elmwood facility, and several Capital Improvement Program (CIP) projects to improve Abel Street. Staff recommends that SMCI perform additional project management and coordination services for the Midtown and related improvements for Main Street and including the library project. Specific tasks include master project scheduling of Capital Improvement and private development projects related to the Midtown, tracking development fee's, providing plan and specification constructability reviews, and project document control. Staff has negotiated a scope and fee for these services not to exceed \$600,000, which is considered reasonable for the work. There are sufficient funds in the project budget(s) to cover this expense.

RECOMMENDATION: Authorize the City Manager to execute the agreement amendment with Swinerton Management & Consulting in the amount of \$600,000, subject to approval as to form by the City Attorney.

***RA11. APPROVE AGREEMENT AMENDMENT: JMH WEISS, INC., ABEL STREET MIDTOWN IMPROVEMENTS, NEW CIP PROJECT, (STAFF CONTACT: GREG ARMENDARIZ, 586-3401)**

BACKGROUND: On March 16, 2004, City Council created a new Capitol Improvement Project (CIP) for the Abel Street Midtown Improvements to fund the reconstruction of Abel Street beyond the limits to be completed by the KB Home development. Council also awarded the consultant contract to JMH Weiss for mapping, survey, and utility engineering design services for the improvement of Abel Street. Staff now proposes to amend the JMH Weiss agreement to include the design of street improvements to Serra Way between Calaveras and Main, and Curtis Street between Abel and Main. Improvements to these segments of Serra and Curtis will address all the appropriate upgrades and additions required to continue the boulevard corridor as recommended for the Midtown. Staff has negotiated the scope of work and the fee for these professional services. The work is proposed on a time and materials basis with a not-to-exceed amount of \$304,000. Funds are available in the project budget for this amendment.

RECOMMENDATION: Authorize the City Manager to execute the agreement amendment with JMH Weiss Inc. in the amount not to exceed \$304,000 subject to approval as to form by the City Attorney.

RA12. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

*** 1. CONSIDER REQUEST FROM RUSSELL SCHOOL FOR CONTRIBUTION TO THE LEADERSHIP PROGRAM CASL LEADERSHIP CAMP: MAYOR ESTEVES**

BACKGROUND: During Citizens Forum at the May 4, 2004, City Council meeting, the Leadership Advisor and a student from Thomas Russell Middle School asked the Council for a contribution to the School's Leadership Program. Specifically, a request was made for financial support towards this summer's California Association of Student Leaders to be held on the campus of Stanford University. The cost of the three-day camp is \$405 per student and 21 students have received permission to attend. Additional information is included in the Council's agenda packets. Mayor Esteves is recommending a contribution of \$500.00 from the Council's Community Promotions budget; sufficient funds are available for this request.

RECOMMENDATION: Approve a \$500.00 contribution to the Russell Middle School Leadership Program from the Council's Community Promotions budget.

* **2. SUPPORT OF HIGH-SPEED RAIL RECOMMENDED ROUTE: MAYOR ESTEVES**

BACKGROUND: The Cities Association Board has requested that all member cities consider supporting the California High-Speed Rail Authority's conclusion to use one of the two southern alignments (Pacheco Pass or Diablo Range) into the San Francisco Bay Area for the state's proposed high-speed rail system.

Attached are a recommended Resolution, Talking Points, and recommended letter to High Speed Rail Authority Board in support of the use of one of the two alignments listed above.

RECOMMENDATION: Approve resolution and letter.

Arts Commission

* **3. REVIEW AND APPROVE THE ARTS COMMISSION'S WORK PLAN (STAFF CONTACT: KATHLEEN YURCHAK, 586-3209)**

BACKGROUND: Pursuant to the Arts Commission (AC) Bylaws, the Arts Commission serves as an advisory body to the City Council on matters pertaining to the arts. The following proposed Work Plan defines the short-term and long-term goals and on going projects that the Arts Commission will be focusing on over the next year. The Commission has voted and approved the following Work Plan:

Short-term Goals

1. Arts Day Milpitas: host 3rd Annual Arts Day celebration; expand event to all ages and community members and to incorporate additional events and activities.
2. Acquisition of Public Art: continue encouragement, recommendation and participation in the acquisition and placement of public Art in Milpitas.
3. Milpitas Global Village Faire: participate in the Milpitas Global Village Faire with an information table and/or activity table, to promote awareness of the Arts in Milpitas.
4. Recognition of Arts contributors at Arts Commission meetings: recognize established as well as up and coming artists who live in Milpitas or offer arts opportunities in the Milpitas community.

Long-term Goals

1. The Arts Commission will strive to continue to improve the quality of arts programs in Milpitas by expanding arts activities and opportunities to include but not limited to:
 - 2nd Phantom Art Gallery Site
 - Cultural Arts Postcard
 - Programming of Literature, Film, Performance Art, Voice, Photography
2. The Arts Commission will work towards, fundraising and arts partnerships, with City assistance:
 - Acquisition of performance space
 - Arts awareness throughout the community

Recurring Annual Tasks

1. Encouraging Art Partnerships in Milpitas
2. Cultural Arts Support Program (June)
3. Phantom Art Gallery (as applied)
4. Arts Day
5. Community Center Bulletin Board Display
6. Special Events - Arts Activities

RECOMMENDATION: Approve the Arts Commission's Work Plan.

XV. UNFINISHED BUSINESS

4. CONSIDERATION OF PROPOSED STANDARD OPERATING PROCEDURE/ PROTOCOL SETTING FORTH PROCEDURES AND POLICIES FOR MAKING CITY RECORDS AVAILABLE TO THE PUBLIC AND PROVIDING NOTICE AND ACCESS TO PUBLIC MEETINGS (STAFF CONTACT: STEVE MATTAS, 586-3040)

BACKGROUND: At the City Council meeting on March 16, 2004, Councilmember Gomez asked the City Council to consider adopting a Statement of Policy and General Rules to guide the City Attorney in the development of a protocol for public access to meetings and for the disclosure of public records. During the meeting, the City Council discussed the issue and provided the City Attorney with direction to 1) collect and assemble comparative data on other Bay Area jurisdictions that have adopted similar policies or ordinances; 2) to come up with some hypothetical situations to illustrate what impacts the policy might have on the City and the Council's deliberative process; and 3) to draft a model policy based on Councilmember's Gomez' proposed Statement of Policy and General Rules.

The attached packets contain four documents. The first consists of a brief description of existing state law governing the release of public records and access to meetings of local legislative bodies under the California Public Records Act, the Ralph M. Brown Act, and other relevant state and federal laws, including an analysis of points where the proposed policy would provide greater access to meetings and records than is provided for under existing law. The second document is a brief memorandum presenting hypothetical situations to illustrate how the proposed policy might impact the City and deliberative processes of the Council. The third is a matrix presenting comparative data on Bay Area jurisdictions. The fourth is a model policy based on Councilmember Gomez' proposed Statement of Policy and General Rules.

RECOMMENDATION: Consider the information provided and then provide direction to staff as to how the Council desires to proceed.

5. CONSIDERATION OF SALARY ADJUSTMENTS FOR UNREPRESENTED EMPLOYEES (STAFF CONTACT: STEVE MATTAS, 586-3040)

BACKGROUND: This item, to consider salary adjustments for unrepresented employees, has been placed on the agenda following direction from the City Council at the May 11, 2004, Budget Hearing. As appropriate, further information will be provided in an oral presentation at the City Council meeting.

RECOMMENDATION: Consider salary adjustments for unrepresentative employee and direct staff accordingly.

6. ODOR CONTROL COMPREHENSIVE ACTION PLAN UPDATE (STAFF CONTACT: DARRYL WONG, 586-3345)

BACKGROUND: This is an update of the odor control coordination activities. Some of the key events that have occurred during the past month include:

1. City Staff and odor consultant, Cal Recovery, completed site visits to Zanker and Cargill to observe odor control best management practices and to discuss odor control activities. These visits are a follow up to previous visits completed earlier to each stakeholder site to verify continued best management practices implementation.
2. City Staff has received summaries of Best Management Practices currently in use or planned at San Jose/Santa Clara Water Pollution Control Plant, Cargill, Zanker and the City of Milpitas sewer system. These documents list management and operational improvements implemented in preparation for warmer weather conditions.
3. City Staff has also received meteorological records from BFI Landfill. The City's consultant is reviewing the information to determine if there is any observable relationship between weather conditions and odor complaints, which may be of value in controlling odors.

The Bay Area Air Quality Management District (BAAQMD) has reported the following number of complaints logged in October: 96, November: 50, December: 16, January: 31, February: 11, March: 23, April: 23, May: 5 as of May 11th. As observed, the frequency of complaints have not substantially changed despite recent warmer weather conditions indicating that best management practices and the rapid notification process have been thus far effective.

RECOMMENDATION: Note receipt and file progress report.

XVI. NEW BUSINESS

7. CONSIDER EXPANSION OF THE CITY'S CODE ENFORCEMENT PROGRAM AND DIRECT STAFF TO IMPLEMENT (STAFF CONTACTS: TAMBRI HEYDEN, 586-3280 AND GLORIA ANAYA, 586-3075)

BACKGROUND: On September 21, 1999, the City Council approved the Neighborhood Beautification Ordinance. The intent of the Neighborhood Beautification Ordinance, which became effective February 1, 2000, was to go beyond elimination of nuisances that posed a health and safety danger to address unsightliness on both private and public properties. Examples of unsightliness targeted in the Neighborhood Beautification Ordinance include such things as outdoor storage (junk, equipment, furnishings, soil, debris and disabled vehicles), dead and overgrown vegetation, dilapidated structures and fences, parking in residential front yards and residential vehicle repair.

Phased implementation of the new ordinance was requested by Council. Phase I involved complaint-driven enforcement of the ordinance and the mailing of courtesy notice violations. Once the public became very aware of the ordinance through outreach and receipt of courtesy notice violations with ample time to remedy violations, Phase II was implemented in 2003. Phase II instituted an administrative citation process. Simultaneously, the administrative citation process was added by the Council to the zoning code in Spring 2003.

While Phase I made major strides in obtaining code compliance, staff resources were used to generate courtesy notices until compliance was achieved. In some cases it was never achieved. It wasn't until the implementation of Phase II in which fines were levied for lack of compliance within the required period that there has been a 99% compliance rate.

Over time expectations have risen with respect to beautification standards and stronger, uniform enforcement. Citizens question why they receive a violation notice when they observe a similar violation elsewhere on properties for which a complaint has not been filed. Temporary signs erected in public rights-of-way or obstructing sidewalks, or on private property - many of which

proliferate on weekends or are abandoned cause unsightliness, wind hazards, and unfair business advantages (see photos included in the Council's agenda packet).

To reach the next step in beautification of the city, the following actions could be taken to expand the City's code enforcement program:

1. Amend the sign ordinance to provide for administrative citations and required approval, without a fee, for temporary signs such as banners.
2. Devise a system to add weekend enforcement.
3. Transition from complaint-driven enforcement to active identification of violations using existing code enforcement staff and field personnel in other departments.
4. Amend the Neighborhood Beautification Ordinance, Zoning Code and Sign Code to reduce the minimum number of days of notification from 30 to 15 to address certain violations such as outdoor storage and overgrown vegetation and clearly provide for the ability to levy a fine without notice for violations that create health and safety dangers or are recurring, intermittent violations.

RECOMMENDATION: Consider expansion of the City's code enforcement program by proceeding with amendments to the Neighborhood Beautification Ordinance, Zoning Code and Sign Code to reduce notification timeframes, add administrative citation abilities, enable fines without notice for certain violations and require approval for temporary signs; transition from complaint-driven enforcement to active violation identification and institute weekend enforcement.

XVII. ORDINANCES

- * **8. ADOPT ORDINANCE NO. 124.26 AMENDING CHAPTER 30 (SIGNS), TITLE XI OF THE CITY OF MILPITAS MUNICIPAL CODE, A SIGN ORDINANCE AMENDMENT TO INCREASE THE NUMBER OF FREESTANDING SIGNS IN THE TOWN CENTER ZONING DISTRICT (STAFF CONTACT: TROY FUJIMOTO, 586-3287)**

BACKGROUND: Ordinance No. 124.26 was introduced at the May 4, 2004, City Council meeting. This ordinance involves amendments to the Sign Ordinance that codifies previous City Council interpretations and allows an increase in freestanding signs in the Town Center zoning district.

RECOMMENDATION: Waive full reading of the ordinance and adopt Ordinance No. 124.26 (Zoning Ordinance Text Amendment No. ZT2003-5).

- * **9. ADOPT ORDINANCES NO. 120.42, 208.39 OF CHAPTERS 1 AND 2, TITLE VIII AND ORDINANCE NO. 48.15 OF CHAPTER 200, TITLE V SETTING UTILITY RATES, PENALTIES AND SERVICE CHARGES FOR NON-PAYMENT OF WATER, SEWER, AND SOLID WASTE COLLECTION FEES, TAMPERING WITH CITY PROPERTY, AND ILLICIT FIRE USE, AND UPDATING CONSTRUCTION WATER PROGRAM PROVISIONS: (STAFF CONTACT: DARRYL WONG 586-3345)**

BACKGROUND: On May 4, 2004, amendments to ordinances Nos. 120.42, 208.39 and 48.15 were introduced to the Council. The amendments adjust water, recycled water, and sewer rates, establish utility penalties, and update construction water program provisions.

RECOMMENDATION:

1. Waive full reading of the ordinances.
2. Adopt Ordinance 120.42 amending sections 6.05, 6.09, 6.10, 6.11, 6.13, 6.14, 6.15, 6.16 and 6.17 of Chapter 1, Title VIII, of the Milpitas Municipal Code setting water and recycled water rates, penalties and service charges for non-payment of water service bills, tampering with City property, illicit fire use, and updating construction water program provisions.

3. Adopt Ordinance 208.39 amending sections 6.01, 6.03, and 6.04 of Chapter 2, Title VIII, of the Milpitas Municipal Code setting sewer rates and penalties and service charges for non-payment of sewer service bills.
4. Adopt Ordinance 48.15 amending section 9 of Chapter 200, Title V, of the Milpitas Municipal Code setting penalties and service charges for non-payment of solid waste collection bills.

XVIII. RESOLUTIONS

- * **10. ADOPT RESOLUTION APPROVING LOT LINE ADJUSTMENT: PROPOSED BUDDHIST TEMPLE EXPANSION AT 50 SOUTH MAIN STREET (PROJECT NO. 3120) (STAFF CONTACT: MEHDI KHAILA, 586-3328)**

BACKGROUND: The property owner wishes to adjust the common lot line between Parcels 1 and 2 of the subject property. The proposed adjustment is necessary to accommodate a future temple approved by the Planning Commission on May 8, 2002. Planning and Building Divisions have no objection to the proposed adjustment.

RECOMMENDATION: Adopt resolution authorizing the lot line adjustment.

- * **11. ADOPT RESOLUTION DIRECTING PREPARATION OF THE ANNUAL ENGINEER'S REPORT, FOR LANDSCAPING AND LIGHTING MAINTENANCE DISTRICT NO. 98-1, SINCLAIR HORIZON, PROGRAM NO. 9479, (STAFF CONTACT: MEHDI KHAILA, 586-3328).**

BACKGROUND: Landscaping and Lighting Maintenance Assessment District (LMD) No. 98-1 provides for servicing and maintaining the public landscaping along Sinclair Frontage Road, Los Coches Creek and Berryessa Creek abutting the Sinclair Horizon residential subdivision. The Landscaping and Lighting Act of 1972, requires adoption of the subject resolution, the preparation of an annual engineer's report and its subsequent approval by the City Council following a public hearing (scheduled for June 15, 2004). Upon conclusion of the public hearing, the assessment for the work is added to the property tax bills for those property owners included within the boundaries of the district.

RECOMMENDATION: Adopt Resolution directing the preparation of the Annual Engineer's Report.

- * **12. ADOPT RESOLUTION DIRECTING PREPARATION OF THE ANNUAL ENGINEER'S REPORT, FOR LANDSCAPING AND LIGHTING MAINTENANCE DISTRICT NO. 95-1, MCCARTHY RANCH, PROGRAM NO. 9474 (STAFF CONTACT: MEHDI KHAILA, 586-3328)**

BACKGROUND: Landscaping and Lighting Maintenance Assessment District No. 95-1 (LMD 95-1), provides for servicing and maintaining the public landscaping and additional lighting along North McCarthy Boulevard and the Gateway landscaping on Ranch Drive.

The Landscaping and Lighting Act of 1972, requires adoption of the subject resolution, the preparation of an annual engineer's report and its subsequent approval by the City Council following a public hearing (scheduled for June 15, 2004). Upon conclusion of the public hearing, the assessment for the work is added to the property tax bills for those property owners included within the boundaries of the district.

RECOMMENDATION: Adopt Resolution directing the preparation of the Annual Engineer's Report.

- * **13. ADOPT RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE FRANCHISE TAX BOARD GOVERNING PARTICIPATION**

IN THE LOCAL GOVERNMENT SHARING PROGRAM (STAFF CONTACT: EMMA KARLEN, 586-3145)

BACKGROUND: The State of California Franchise Tax Board (FTB) offered an opportunity for local agencies to participate in a Local Government Sharing Program (AB63). This program allows FTB to extract certain information from the 2003 State income tax files and transmitted the records to the local agencies. The records will identify taxpayers that conduct business activities in the local jurisdiction by zip code. In participating in the program, the City may gain information about local businesses that may not be obtained through sales tax data. The City may further match these records with the business license system to determine any omission by the businesses to apply for business licenses. The City's share of the cost for participating in this program is \$1,821. The agreement is year to year and can be terminated anytime by providing 30 days prior written notice. Staff recommends that the City of Milpitas participate in this program as a trial basis this year to evaluate its effectiveness.

RECOMMENDATION: Adopt resolution authorizing the City Manager to execute an agreement with the Franchise Tax Board governing participation in the Local Government Sharing Program.

*** 14. ADOPT RESOLUTION APPROVING AGREEMENT WITH THE CALIFORNIA HIGHWAY PATROL FOR JOINT USE OF FIRING RANGE (STAFF CONTACT: STEVE PANGELINAN, 586-2433)**

BACKGROUND: The Milpitas Police Department and the California Highway Patrol (CHP) have jointly used a shooting range at a minimal cost for the past several years. Five years ago, the property owner began charging rent in the amount of \$6,000 for the property use. This cost has been split evenly between the Milpitas Police Department and the CHP. The CHP cannot enter into an agreement with a private party. They are, however, willing to continue in an agreement with the City of Milpitas in order to pay their share, plus an additional \$50 per month to off-set maintenance costs.

Included in the Council's agenda packet are a resolution and an agreement between the California Highway Patrol and the City of Milpitas Police Department for joint use of the firing range.

RECOMMENDATION:

1. Adopt resolution approving an agreement with the California Highway Patrol for joint use of the pistol range.
2. Authorize the City Manager to execute agreement with the California Highway Patrol, subject to approval as to form by the City Attorney.

*** 15. ADOPT RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A WIND UP AGREEMENT WITH ABAG POWER (STAFF CONTACT: EMMA KARLEN, 586-3145)**

BACKGROUND: ABAG Publicly Owned Energy Resources (ABAG POWER) is a Joint Powers Agency created by the Association of Bay Area Governments (ABAG) in 1998 to provide electricity and natural gas aggregation services to local governments in PG&E's service territory. The City of Milpitas was a member of the ABAG POWER JPA, and was also a participant in the Electric Aggregation Program. As a result of the energy crisis the Electric Aggregation Program was suspended in June 2001, and all of the City's accounts were returned to PG&E service. At the time the program was suspended the City had \$83,865 working capital on deposit with ABAG POWER:

These funds have been held by ABAG POWER to cover potential operating expenses of the Program, as well as program windup costs. ABAG POWER now proposes to return these funds to the City in their entirety. These funds will be distributed as soon as a critical mass of ABAG POWER members has executed the Windup Agreement.

Apart from the working capital deposit funds, ABAG POWER filed a claim in the PG&E bankruptcy case on behalf of Electric Program members to recover funds associated with Direct Access credits that PG&E had refused to pay in the months leading up to their bankruptcy filing. ABAG POWER has subsequently reached a stipulated settlement with PG&E as to the amount of the claim (\$17,000,000). The City's proportional share of this claim (including interest) is \$316,870.

In addition to the amounts noted above, ABAG POWER expects to have a small surplus of funds at the completion of the windup. The City's proportional share of this surplus will be calculated in accordance with the Wind Up Agreement and distributed by March 31, 2005.

Furthermore, certain amounts from the ABAG POWER Electric Aggregation Program remain on deposit with NCPA to cover credit risks associated with energy purchased through the Independent Systems Operator (ISO) and California Power Exchange (PX). These amounts remain un-recovered due to court actions related to the PX bankruptcy and FERC regulatory actions related to potential ISO refunds. Should these amounts be recovered they will be proportionately distributed to former ABAG POWER Electric Program members.

Risks. The Windup Agreement requires that certain risks be transferred from ABAG POWER to the City in the City's proportionate share. These risks are summarized as follows:

- Risk that PG&E or other agency (e.g. ISO) may try to collect charges from billing periods when the City's accounts were part of the ABAG POWER program.
- Risk that the CPUC may at some time impose a surcharge on former Direct Access customers.
- Risk that the amounts on deposit with NCPA are insufficient to cover future credit requirements with the ISO and/or PX.

Staff has reviewed the Windup Agreement and supporting documentation and found the risks to be nominal and therefore acceptable.

RECOMMENDATION: Adopt resolution authorizing the City Manager to execute a Windup Agreement with ABAG POWER and receive distributions of funds as they become available.

XIX. BIDS AND CONTRACTS

- * **16. AUTHORIZATION TO AMEND THE CURRENT AGREEMENT FOR THE COLLECTION AND DISPOSAL OF SOLID WASTE WITH BFI WASTE SYSTEM OF NORTH AMERICA, INC., IN ORDER TO PROVIDE FOR IMMEDIATE STREET SWEEPING SERVICES (STAFF CONTACT: BLAIR KING, 586-3060)**

BACKGROUND: On April 20, 2004, the City Council authorized staff to incorporate street sweeping services into the Solid Waste Franchise Agreement and extend the agreement with BFI for an additional ten-year period in exchange for, among other things, BFI providing street sweeping at no cost during calendar years 2004-2008. In order to allow sufficient time to consult with the City Council, draft an extended franchise agreement, and benefit from BFI's street sweeping services as soon as possible, it is proposed that the Council adopt a street sweeping amendment to the current BFI agreement that will allow BFI to begin street sweeping immediately (within 30 days). This would provide sufficient time to thoughtfully draft the franchise extension and to also include other issues identified by the Council, public, and staff. The proposed agreement is not the extension of the franchise.

If this amendment is adopted and the franchise agreement is not extended, BFI's obligation for street sweeping will expire on January 31, 2005.

RECOMMENDATION: Authorize the City Manager to amend the current agreement for the collection and disposal of solid waste with BFI Waste System of North America, Inc. to provide for street sweeping services.

- * 17. **APPROVE SUBDIVISION IMPROVEMENT AGREEMENT, FINAL MAP AND PUBLIC IMPROVEMENT PLANS FOR KENNEDY SUBDIVISION, KENNEDY DRIVE, TRACT NO. 9560 (PROJECT NO. 3159) (STAFF CONTACT: MEHDI KHAILA, 586-3328)**

BACKGROUND: This nineteen-lot single family subdivision will be served by public utilities located within the proposed public street and easements. The final map and improvement plans are ready for approval. Copies of the Subdivision Improvement Agreement and excerpts of the final map and improvement plans are included with the Council agenda packet. A complete set of the final map and improvement plans are available for review in the office of the City Engineer.

RECOMMENDATION:

1. Approve the improvement plans and the final map.
2. Authorize the City Manager to execute the secured Subdivision Improvement Agreement subject to the approval as to form by the City Attorney.

- * 18. **APPROVE AGREEMENT EXTENSION FOR ANNUAL HVAC MAINTENANCE AT THE POLICE/PUBLIC WORKS BUILDING (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: Pacific Air Solutions was awarded a three year agreement to maintain and service the HVAC system at the Police/Public Works building on May 1, 2001. The agreement has an option to renew for two additional single years provided the services rendered meets the City's requirements. Pacific Air Solutions has done a more than adequate job maintaining the buildings' HVAC systems and is willing to keep the pricing at the same rate as the original three-year agreement.

A one year extension of the agreement to May 1, 2005 is proposed in the amount not to exceed \$24,000.00. There are sufficient funds in the Facilities Maintenance Function budget for this maintenance service.

RECOMMENDATION: Authorize the City Manager to execute an amendment to extend the agreement one additional year with the Pacific Air Solutions to May 1, 2005, in an amount not to exceed \$24,000.00, subject to approval as to form by the City Attorney.

- * 19. **APPROVE FIRST AMENDMENT TO THE AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM (STAFF CONTACT: DARRYL WONG, 586-3345)**

BACKGROUND: The Household Hazardous Waste (HHW) Collection Program, in existence since October 1991, was created as a cooperative effort of the County Integrated Waste Management Program and fourteen local jurisdictions of Santa Clara County. The HHW Program provides for legal, convenient, and economical disposal of unwanted hazardous household products such as paints, solvents, pesticides, cleaning chemicals, aerosols, automotive fluids and batteries.

The County coordinates collection of HHW products at three permanent facilities located in San Jose, Sunnyvale, and San Martin and events as shown in the agreement schedule. Residents are able to schedule appointments at these sites through the year as needed. The next mobile event in Milpitas for residents is scheduled for June 2004.

The amendment provides for additional County services for operation of household hazardous waste disposal facilities and for mobile hazardous disposal events. No additional local funding is required by Milpitas for these services. Finally, the 2004-05 collection schedule is delineated.

RECOMMENDATION: Authorize the City Manager to execute the First Amendment to the Countywide Household Hazardous Waste Collection agreement with the Santa Clara County Department of Environmental Health.

- * **20. APPROVE A CONSULTANT SERVICES AGREEMENT WITH LSA ASSOCIATES, INC. FOR THE SENIOR HOUSING AND COUNTY HEALTH CENTER EIR, (STAFF CONTACT: DENNIS CARRINGTON, 586-3275)**

BACKGROUND: The City of Milpitas and Santa Clara County are developing a project comprised of 98 senior affordable housing units and a 55,000 square foot county health center respectively. The project will be located on the west side of North Main Street opposite the site of the proposed Library. The City of Milpitas is seeking consultant assistance to prepare an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA). The EIR will evaluate the proposed project and propose appropriate mitigation measures.

Staff has received proposals for services from, and has interviewed, several environmental consulting firms and recommends that LSA Associates, Inc. (LSA) provide this service. LSA is a well-respected firm and has recent experience providing these services for similar projects throughout the Bay Area. The work program in the draft agreement in the Council's agenda materials includes preparing project initiation studies, an analysis of the setting, analysis of impacts, necessary mitigation measures, cumulative and growth inducing impacts, an alternatives analysis and a draft and final Environmental Impact Report. The EIR is scheduled to be certified simultaneously with the certification of the KB Homes/Elmwood EIR. The cost is not to exceed \$135,000.

Funding for the LSA contract would be from Capitol Project No. 8103 – Senior Housing Project.

RECOMMENDATION: Authorize the City Manager to enter into the Consulting Services Agreement with LSA Associates, Inc. in the amount not to exceed \$135,000, subject to approval as to form by the City Attorney.

- * **21. APPROVE PERMITTEE DEDICATION AND IMPROVEMENT AGREEMENT WITH AVATAMSAKA BUDDHIST LOTUS SOCIETY (PROJECT NO. 3120) (STAFF CONTACT: MEHDI KHAILA, 586-3328)**

BACKGROUND: On May 8, 2002, Milpitas Planning Commission approved expansion of a building for Buddhist Lotus Society at 50 S. Main Street.

Avatamsaka Buddhist Lotus Society (Permittee) is required to execute a secured public improvement agreement with the City to dedicate necessary public service utility easement and construct all necessary public improvements which included curb and gutter, sewer, water, storm drain and street light facilities within South Main Street and East Carlo Street.

RECOMMENDATION: Approve the Permittee Dedication and Improvement Agreement and authorize the City Manager to execute the same, subject to the approval as to form by the City Attorney.

- * **22. AUTHORIZE THE CITY MANAGER TO EXECUTE AGREEMENT AMENDMENT WITH GSS CONSULTING FOR VARIOUS CIP PROJECTS (STAFF CONTACT: MARK ROGGE, 586-3403)**

BACKGROUND: GSS Consulting is currently providing assistance with review and preparation of technical specifications and drawings, project coordination with outside agencies, and construction technical support on various capital improvement projects, including the library and projects associated with Midtown.

Additional services are proposed to include continued project management services, scheduling, and assistance with the capital improvement program reporting. The negotiated not-to-exceed amount for such services is \$124,000, which is considered reasonable for the anticipated services. Sufficient funds for the proposed services are available in the project budgets.

RECOMMENDATION: Authorize the City Manager to execute the agreement amendment with GSS Consulting, in the not-to-exceed amount of \$124,000, subject to approval as to form by the City Attorney.

*** 23. AWARD BID FOR COMMERCIAL EXERCISE EQUIPMENT (PROJECT NO. 8053)
(STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: Staff issued a Request for Quotation for three pieces of commercial exercise equipment to six exercise equipment suppliers on Purchasing's bidders list, two responded. These exercise units will be used to augment existing equipment, due to increased membership growth and use at the Sports Center. The following is the recap of bids received including tax and freight:

<u>Bidder</u>	<u>Amount</u>
LifeFitness	\$10,842.50
Bussani Exercise Equipment	\$14,842.50

There are sufficient funds available in the Milpitas Sports Center (Phase 8) project (Project No. 8053) funds to purchase the exercise equipment.

RECOMMENDATION: Award the bid for the purchase of three pieces of commercial exercise equipment to the lowest bidder, LifeFitness, in the amount of \$10,842.50.

*** 24. AUTHORIZE THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH HARGIS & ASSOCIATES FOR ASSISTANCE WITH POLICE DEPARTMENT SENIOR MANAGEMENT RECRUITMENTS (STAFF CONTACT: CHERIE ROSENQUIST, 586-3082)**

BACKGROUND: During June and July 2004, the Police Department will be conducting multi-functional examinations for the positions of Police Captain and Police Commander. The resultant eligibility lists will fill an immediate vacancy and provide an eligibility list to fill possible vacancies over the next 12 months.

Hargis & Associates are experts in the field of public safety examinations and widely utilized among public safety agencies throughout the Bay Area. Hargis & Associates primarily assists with job analysis, test development, scrutiny of relevant test content, unbiased rating guidelines to deter challenges and test scoring. Hargis & Associates has a highly regarded history of executing very difficult, high-level public safety examinations, and has never been successfully challenged on the outcome of any examination they have administered.

The cost of the two examination processes will not exceed \$10,400. There are sufficient funds allocated in the Human Resources budget.

RECOMMENDATION: Authorize the City Manager to execute an agreement with Hargis & Associates, subject to approval as to form by the City Attorney, in an amount not to exceed \$10,400 for the administration of examinations for Police Captain and Police Commander.

XX. CLAIMS AND DEMANDS

*** 25. APPROVE PAYMENT REQUESTS: MISCELLANEOUS VENDORS / CONTRACTORS
(STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$14,700.00 to ThyssenKrupp Elevator Corp. for annual elevator service and preventive maintenance at the Police/Public Works building and City Hall. (Funds are available from the Public Works Department operating budget for this service.)
2. \$5,685.00 to Pacific Air Solutions for replacing three 120 gallon hot water heaters including the building of a raised support system to elevate new tanks from the concrete floor and new plumbing connections at the Sports Center. (Funds are available from the Public Works Department operating budget for this service.)
3. \$29,000.00 to Enviro Commercial Sweeping for street and parking lot sweeping services through the end of June for the Street Maintenance Function. Beginning in July, these sweeping services may be incorporated in the solid waste franchise agreement. This amount is the final monthly payments to the current contractor. (Funds are available from the Public Works Department operating budget for this service.)
4. \$10,374.00 to ACCO Engineered Systems for annual HVAC equipment and building automation computer system service and preventive maintenance for the City Hall building for the Facility Maintenance Division. (Funds are available from the Public Works Department operating budget for this service.)

RECOMMENDATION: Approve the purchase requests

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, JUNE 1, AT 7:00 P.M.**

City Council

Jose Esteves, Mayor

Patricia Dixon, Vice Mayor

Bob Livengood, Councilmember

Althea Polanski, Councilmember

Armando Gomez Jr., Councilmember

CITY OF MILPITAS

AGENDA

ADJOURNED CITY COUNCIL/REDEVELOPMENT AGENCY

May 11, 2004

6:30 p.m.

Council Chambers, City Hall

455 E. Calaveras Blvd

I. CALL TO ORDER/ROLL

II. PLEDGE OF ALLEGIANCE

III. CITIZENS FORUM

*Public comment is invited on any subject not on tonight's Agenda;
Please limit remarks to two minutes; As an unagendized item, no response
is required from City staff or the Council and no action can be taken;
However, the Council may instruct the City Manager to agendized the item for
a future meeting.*

IV. APPROVAL OF AGENDA

V. PUBLIC HEARING: PROPOSED FISCAL YEAR 2004-2005 BUDGET

1. City Manager/Finance Director Overview
2. Operating Departments/Division Presentations
 - City Council
 - City Manager
 - Redevelopment & Economic Development
 - City Clerk
 - Engineering
 - Building
 - Recreation
 - Information Services
 - Human Resources
 - City Attorney
 - Finance

- Non-Departmental
 - Public Works
 - Planning & Neighborhood Services
 - Police
 - Fire
3. Review Redevelopment Agency Budget & Financing
 4. Review 2004-2005 Capital Improvement Budget
 5. Open Public Hearing for Comments

VI. RECOMMENDATIONS

1. Close the public hearing;
2. Conceptually approve the 2004-2005 City/Agency Proposed Budgets;
3. Conceptually approve the 2004-2005 Capital Improvement Program;
4. Conceptually approve the Preliminary Five-Year (2004-2009) Capital Improvement Program; and
5. Conceptually approve salary adjustments for Management Employees.

VII. ADJOURNMENT

In compliance with the Americans with Disabilities Act, individuals requiring accommodation for this meeting should notify the City Clerk 48 hours prior to the meeting at (408) 586-3001, TDD (408) 586-3013. Hearing assistance devices are available for use in the Council Chambers during the meeting.

- I. **ROLL CALL (6:00 p.m.)**
- II. **ADJOURN TO CLOSED SESSION**
 1. **CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**
(Pursuant to Government Code Section 54956.9[a])
Title: Stansell v. City of Milpitas (WCAB No. WCK 0054841 and 0054842)
 2. **CONFERENCE WITH LABOR NEGOTIATOR**
(Pursuant to Government Code Section 54957.6)
Agency Negotiator: Eddie Kreisberg and Cherie Rosenquist
Employee Organization: LIUNA
 3. **CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
(Pursuant to Government Code Section 54956.8)
Property: APN #022-08-042
Negotiating Parties: City of Milpitas and County of Santa Clara
Agency Negotiator: Thomas J. Wilson
Under Negotiation: Terms and Conditions for Disposition or Lease
 4. **CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
(Pursuant to Government Code Section 54956.8)
Property: Vacant Property N. Main Street (APN No. 2208003)
Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza
Agency Negotiators: Thomas J. Wilson and Blair King
Under Negotiation: Terms and conditions for acquisition of property
 5. **CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
(Pursuant to Government Code Section 54956.8)
Property: 130-150 Winsor Street and 116-130 N. Main Street
Negotiating Parties: Milpitas Redevelopment Agency and Bruce Pallak, dba Garbe's Towing
Agency Negotiators: Thomas J. Wilson and Steven Mattas
Under Negotiation: Terms and conditions for acquisition of property interest
- III. **CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present**
- IV. **PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. **APPROVAL OF MINUTES: April 20, 2004**
- VI. **SCHEDULE OF MEETINGS**
- VII. **PRESENTATIONS**

Certificate of Reappointment:

- Diane McDonough, Economic Development Commission

Proclamations:

- Public Works Week, May 16-22, 2004
- Older Americans Month, May 2004
- Water Awareness Month, May 2004

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. APPROVAL OF AGENDA

XI. CONSENT CALENDAR (Items with Asterisks)

XII. PUBLIC HEARINGS

1. **Approve Comment Letter for BART Extension to Milpitas, San Jose and Santa Clara DEIS/EIR (Staff Contact: Joe Oliva, 586-3290)**
2. **Appeal of Planning Commission Decision to Approve the Redevelopment of the Town Center Including 65 Multi-Family Homes, a Supermarket, Sign Program and Freestanding Signs (SZ2003-12 & 13, UP2002-42 & 43, UP2003-57 & 58, and UP2004-1) (Staff Contact: Troy Fujimoto, 586-3287)**
3. **Introduce Ordinance No. 124.26 Amending Chapter 30 (Signs), Title XI of the Milpitas Municipal Code, a Sign Ordinance Amendment to Increase the Number of Freestanding Signs in the Town Center Zoning District (Staff Contact: Troy Fujimoto, 586-3287)**
4. **Introduce Ordinance Nos. 120.42, 208.39, and 48.15, Amendments to Titles VIII and V of the Milpitas Municipal Code: 2004/05 Water, Recycled Water, and Sewer Rate Adjustments; Service Charges/Penalty; and Adjusting Construction Water Use Provisions (Staff Contact: Darryl Wong, 586-3345)**

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: April 20, 2004

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

RA5. Adopt Resolution Approving Memorandum of Understanding Between the Redevelopment Agency and Shapell Industries of Northern California (Staff Contact: Felix Reliford, 586-3071)

RA6. Review Progress Report on Library Project (Staff Contact: Greg Armendariz, 586-3220)

RA7. City of Milpitas Financial Status Report for the Nine Months Ended March 31, 2004, (Staff Contact: Emma Karlen, 586-3145)

***RA8. City of Milpitas Investment Portfolio Status Report for the Quarter Ended March 31, 2004, (Staff Contact: Emma Karlen, 586-3145)**

***RA9. Adopt Resolutions Approving Initial Acceptances; Civic Center (Project No. 8026) (Staff Contact: Greg Armendariz, 586-3220)**

RA10. AGENCY ADJOURNMENT TO 6:30 P.M., MAY 11, 2004, AND SUBSEQUENTLY TO 6:30 P.M. MAY 13, 2004, (IF NECESSARY) FOR BUDGET HEARINGS IN THE COUNCIL CHAMBERS

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

*** 5. Authorize Mayor to Sign Letter Supporting AB 3011 (Laird): Motor Vehicle License Fee for Street Improvements and Maintenance: Vice Mayor Dixon (Staff Contact: Cindy Maxwell, 586-3282)**

Transportation Subcommittee

*** 6. Approve Revised Transportation Position Statements: Transportation Subcommittee (Staff Contact: Cindy Maxwell, 586-3282)**

XV. UNFINISHED BUSINESS (NONE)

XVI. NEW BUSINESS

*** 7. Accept Crowne Plaza Employee's Donation to S.A.F.E. Neighborhood Preparedness Program (Staff Contact: Bill Weisgerber, 586-2811)**

XVII. ORDINANCES (NONE)

XVIII. RESOLUTIONS (NONE)

XIX. BIDS AND CONTRACTS

*** 8. Authorize the City Manager to Execute an Agreement with Hargis & Associates for Assistance with Fire Department Recruitments (Staff Contact: Bill Weisgerber, 586-2811)**

*** 9. Authorize the City Engineer to Execute a Contract Change Order: Parallel Force Main (Project No. 6078) (Staff Contact: Steve Erickson, 586-3317)**

*** 10. Approve Budget Appropriation and Award Construction Contract: Hall Park Walkway (Project No. 5058) (Staff Contact: Greg Armendariz, 586-3320)**

*** 11. Award Construction Contract: Singley Area Street Rehabilitation, Phase III (Project No. 4200); Marylinn Drive Sidewalk (Project No. 4222); and Sports Center Masterplan Improvement, Phase I (Project No. 8149) (Staff Contact: Doug De Vries, 586-3313)**

*** 12. Award Bid for Purchase of Engineering Plotter (Staff Contact: Lou Zenzen, 586-3161)**

*** 13. Authorize the Installation of a Network Fusion Link Between Fire Station One and City Hall by Professional Convergence Solutions for an amount not to exceed \$8,364.75 (Project No. 8093) (Staff Contact: Terry Medina, 586-2703)**

XX. CLAIMS AND DEMANDS

*** 14. Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Lou Zenzen, 586-3161)**

XXI. ADJOURNMENT TO 6:30 P.M., MAY 11, 2004, AND SUBSEQUENTLY TO 6:30 P.M. MAY 13, 2004, (IF NECESSARY) FOR BUDGET HEARINGS IN THE COUNCIL CHAMBERS

CITY OF MILPITAS
Agenda Reports
Milpitas City Council Meeting
May 4, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

XII. PUBLIC HEARINGS

1. APPROVE COMMENT LETTER FOR BART EXTENSION TO MILPITAS, SAN JOSE AND SANTA CLARA DEIS/EIR (STAFF CONTACT: JOE OLIVA, 586-3290)

BACKGROUND: On March 16, 2004, the Santa Clara Valley Transportation Authority (VTA) released the BART Extension to Milpitas, San Jose and Santa Clara Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) for public review and comment by May 14, 2004. The 16.3-mile BART extension from Fremont through Milpitas and San Jose and terminating in Santa Clara will consist of seven stations (plus the future South Calaveras Station). Revenue service could begin as early as 2014, depending on the availability of funding. The Planning Commission and Transportation Subcommittee will review the comment letter at their respective meetings on April 28th and 29th. Staff will provide a verbal report of their discussion and actions at the Council meeting.

In addition to the full-build BART alternative, the DEIS/EIR analyzed two other alternatives. The "No Action" alternative assumed only planned and programmed transit and highway projects under year 2025 conditions. The "Baseline" alternative added additional express bus routes to serve the transit corridor as well as other necessary supporting transit improvements.

Staff has identified five major issues in the comment letter in addition to numerous detailed issues. The five major issues identified by staff are:

1. Land Use/ Montague Station Design

The Montague station design should maximize Transit Oriented Development (TOD) opportunities to most effectively use the public's capital investment in the BART extension and to implement the City's Midtown Plan. Specific design issues and areas of concern are: (a) minimizing property acquisition, (b) providing compact station footprints, (c) encouraging pedestrian and bicycle travel, (d) providing an urban transit experience with a plaza and transit-related retail, (e) providing aerial walkways to adjacent land uses to the southwest beyond the LRT and to the Great Mall, (f) optimizing the connection to the Great Mall with a walkway under Montague and a no-fee entry north of Montague if an aerial walkway is not constructed and (g) providing a bus transit center under the parking structure adjacent to Montague Expressway.

2. Dixon Landing Road Options

Milpitas does not support the aerial option for the Dixon Landing Road alignment. The aerial option results in significant environmental impacts, including noise, vibration, and aesthetics, to residents and businesses in the area that cannot be mitigated. Additionally, the noise impacts of the aerial option would invalidate millions of dollars already invested by the City for soundwalls. Further analysis is needed to thoroughly evaluate the two non-aerial options. Given the information provided at this time, the City prefers the at-grade option with a design speed of 35 miles per hour if access to surrounding properties can be adequately addressed.

3. Railroad Issues

Milpitas recommends that the Union Pacific spur line, located north of Montague Expressway, be abandoned rather than relocated as proposed in the DEIS/EIR. Abandonment of the spur line would significantly reduce project costs, avoid disruption to the public park and private properties, and support future development of surrounding properties.

Milpitas supports relocating the railroad turnaround ("wye") outside Milpitas. The proposed relocation north of Montague Expressway would negatively impact potential existing and future transit oriented development in the area.

4. Minimum Operating Segment (MOS)

Significant parking impacts could occur at the Montague/Capitol station should the MOS still be in place past 2015. The DEIS/EIR states there will not be any parking impacts to the Capitol/Montague station in year 2015, because the station will be built to 2025 demand. A detailed year 2025 parking analysis under MOS conditions should be prepared analyzing "worst case" to verify that there will be adequate parking should the Berryessa Station be delayed beyond 2015.

5. Visual Quality and Aesthetics

The aerial option at Dixon Landing Road, will have significant and unmitigatable impacts on the aesthetics of the area and on views of Mission Peak and the Diablo Hills. Further analysis of these impacts needs to be provided.

RECOMMENDATION:

1. Close the Public Hearing.
2. Discuss the draft comment letter on the BART Extension to Milpitas, San Jose and Santa Clara DEIS/EIR, and the recommendations of the Planning Commission and Transportation Subcommittee.
3. Approve the attached draft comment letter on the DEIS/EIR.

2. APPEAL OF PLANNING COMMISSION DECISION TO APPROVE THE REDEVELOPMENT OF THE TOWN CENTER INCLUDING 65 MULTI-FAMILY HOMES, A SUPERMARKET, SIGN PROGRAM AND FREESTANDING SIGNS (SZ2003-12 & 13, UP2002-42 & 43, UP2003-57 & 58, AND UP2004-1) (STAFF CONTACT: TROY FUJIMOTO, 586-3287)

BACKGROUND: The Planning Commission held a public hearing on March 24, 2004, to consider the proposed redevelopment of the Town Center. After reviewing public testimony, the Planning Commission certified the Negative Declaration (EA No. P-EIA2002-12) and approved the project by a 4 to 3 vote.

The basis for the majority vote support was a conclusion that the public improvements package and the significant changes planned to update the center and revive its customer base outweighed the loss of certain businesses and the lower projected density. Subsequently, the approval has been appealed to the City Council for the following reasons:

1. Constructing an additional supermarket and the adverse effect on existing businesses.
2. Demolishing the cinema.
3. Increasing housing in this location.
4. Lack of conformance of a supermarket with the General Plan.

An evaluation of these points is provided in the background report included in the City Council's packet. Based on the evaluation, staff recommends upholding the Planning Commission approval of the redevelopment of the Town Center, supported by the findings and special conditions contained in the Council's packet.

RECOMMENDATION:

1. Close the Public Hearing.
2. Uphold the Planning Commission's approval of S-Zone (SZ2003-12 & 13) and Use Permits No. UP2002-42 & 43, UP2003-57 & 58, and UP2004-1.

3. INTRODUCE ORDINANCE NO. 124.26 AMENDING CHAPTER 30 (SIGNS), TITLE XI OF THE MILPITAS MUNICIPAL CODE, A SIGN ORDINANCE AMENDMENT TO INCREASE THE NUMBER OF FREESTANDING SIGNS IN THE TOWN CENTER ZONING DISTRICT (STAFF CONTACT: TROY FUJIMOTO, 586-3287)

BACKGROUND: This item was continued from the April 4, 2004, City Council meeting to allow this item to coincide with the appeal of the Redevelopment of the Town Center.

In 1989, the City Council adopted a policy establishing five (5) sub-areas within the Town Center zoning district. The purpose of the policy was to allow each sub-area the ability to have one freestanding sign. Prior to the adoption of the policy, the entire Town Center District was limited to one freestanding area identification sign.

The five Town Center sub-areas are:

1. Beresford Square shopping center
2. Shapell office building parcel
3. Town Center Phase III parcel (now developed with townhomes as "Beresford Village")
4. Town Center shopping complex
5. Hotel and office area (Town Center District east of Hillview Drive)

The applicant is requesting the Sign Ordinance be amended to recognize the commercial sub-areas, as they currently exist. The request also includes a proposal to allow up to three freestanding signs for the Town Center shopping center. This would be accomplished by allocating the sign allowance for Phase III that was never used to the Town Center shopping center and allowing a new third sign. This would net one additional sign in the District above what was previously allowed.

Because this amendment is allowing one additional sign for the district, the sign is categorically exempt from CEQA review pursuant to Section 15311, Class 11 (accessory structures).

Staff recommends approval of the ordinance amendment based on the City granting a freestanding sign for Phase III that was never used and if this project was located anywhere else in the City, based on the number of street frontages and the amount of street frontage, the development would be allowed to have three (3) freestanding signs.

RECOMMENDATION

1. Close the Public Hearing.
2. Waive reading beyond the title and introduce Ordinance No. 124.26.

4. INTRODUCE ORDINANCE NOS. 120.42, 208.39, AND 48.15, AMENDMENTS TO TITLES VIII AND V OF THE MILPITAS MUNICIPAL CODE: 2004/05 WATER, RECYCLED WATER, AND SEWER RATE ADJUSTMENTS; SERVICE CHARGES/PENALTY; AND ADJUSTING CONSTRUCTION WATER USE PROVISIONS (STAFF CONTACT: DARRYL WONG, 586-3345)

BACKGROUND: Water, recycled water and sewer rate adjustments and service charge recommendations have been prepared by staff. The recommended 2004/05 Utility Rates are consistent with the Financial Utility Master Plan approved by Council on April 15, 2003. The recommendations have been reviewed by the Utility Rate Sub-Committee.

Proposed changes are as follows:

Water Rates: For a typical single family resident, water cost will increase by \$3.14 per month, or from \$52.12 to \$58.40 in the bimonthly bill. Similar increases will occur for other water and recycled water user categories as shown in the table below.

Proposed 2004/05 Water Rates
(For meters read on or after July 26, 2004)

Water and Recycled Water Quantity Charges	Current per hundred cubic feet (hcf)	Proposed 2004/2005 per hundred cubic feet (hcf)
Residential 0-20 hcf	\$1.15	\$1.29
> 20 hcf	\$2.42	\$2.71
Commercial, Industrial, and Institutional	\$2.64	\$2.95
Recycled Industrial Process	\$1.32	\$1.48
Recycled Dual-Plumb	\$1.32	\$1.48
Potable City	\$1.06	\$1.15
Potable irrigation all others	\$3.01	\$3.37
Recycled irrig. formerly wells	\$0.58	\$0.63
Recycled agric	\$0.22	\$0.27
Recycled irrig city	\$0.55	\$0.55
Recycled irrig all others	\$2.41	\$2.70
Santa Clara County (Ed Levin Park)	\$1.07	\$1.16
Bimonthly Fixed charges; typical increase for all other sizes (not shown)		
Residential 5/8 inch meter	\$14.60	\$16.34
Non-residential 3/4 inch meter	\$16.38	\$18.33
Residential Fire Service 2"	\$23.35	\$26.13
Non-Residential Fire Service 2"	\$24.69	\$27.63

Sewer Rates: For a typical single family resident, sewer use cost will increase by \$2.08 per month, or from \$46.10 to \$50.25 in the bimonthly bill. Per Federal Environmental Protection Agency requirements, other user categories are adjusted based upon sewage discharge strength, as shown in the table below.

Proposed 2004/05 Sewer Rates
(For meters read on or after July 26, 2004)

Sewer Quantity Charges	Current per hundred cubic feet (hef)	Proposed 2004/2005 per hundred cubic feet (hef)
Single Family bimonthly per dwelling unit	\$46.10	\$50.25
Multi-Family bimonthly per dwelling unit	\$33.82	\$36.48
Mobile Home bimonthly per dwelling unit	\$21.27	\$22.76
Commercial categories per hcf	\$1.54-\$3.46	\$1.80-\$3.44
Industrial categories per hcf	\$0.01-\$5.12	\$0.01-\$4.89
Institutional categories per hcf	\$1.70-\$1.84	\$1.93-\$2.30
Fixed charges		
Non-Residential bimonthly	\$7.78	\$8.48

Service Charges: Staff is recommending utility service charges and penalties for late payments on water, recycled water, sewer, and solid waste charges as shown below:

Service Charges/Penalties Proposed	Amount
Late Payment Charge	5% of the unpaid balance after due date, additional 5% applied after a reminder date is passed
24-Hour Water Shut Off Notice Charge	\$10.00
Water Reconnection Charge	\$50.00 during business hours and \$75.00 after business hours
Tampering With City Property Charge	\$150.00 per occurrence
Illicit Fire Service Use Charge	\$14.75 per hcf for consumption greater than 1 hcf bimonthly

Changes to the City construction water use procedure is also proposed to streamline and clarify the program, and allow better tracking of temporary meters loaned by the City.

RECOMMENDATION:

1. Close the public hearing for water, recycled water, and sewer rates adjustment, service charges, and construction water program adjustments.
2. Waive reading beyond the titles.
3. Introduce Ordinance No. 120.42 setting Water Service, Service Charges/Penalties, and adjusting Construction Water Use Provisions; Ordinance No. 208.39 setting Sewer Service and Service Charges/Penalties; and Ordinance No. 48.15 setting Solid Waste Cost Service Charges/Penalties.

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: April 20, 2004

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

RA5. ADOPT RESOLUTION APPROVING MEMORANDUM OF UNDERSTANDING BETWEEN THE REDEVELOPMENT AGENCY AND SHAPELL INDUSTRIES OF NORTHERN CALIFORNIA (STAFF CONTACT: FELIX RELIFORD, 586-3071)

BACKGROUND: On February 3, 2004, the Redevelopment Agency authorized staff to enter into negotiations with Shapell Industries of Northern California for the development of a 65-unit townhome development and redevelopment of the Town Center to include a 54,000 square foot Safeway Supermarket. Redevelopment Agency assistance was authorized specifically for the development of 20 deed-restricted affordable housing units.

It is recommended that the Agency adopt a resolution approving a Memorandum of Understanding (MOU) providing a loan assistance to facilitate the construction of 20 deed-restricted affordable housing units consisting of: 16 moderate-income units and 4 very low-income units. The financial assistance for the 4 very low-income units will consist of the rehabilitation of rental units off-site with deed restrictions. In return for the Agency's financial assistance with the 4 off-site units, the developer will fund and/or construct on and off-site improvements benefiting the public valued at \$392,000.

The total value of the proposed Agency assistance in loans and grant is \$1million. Funds are pledged in the form of silent second loans (\$50,000/unit for a total of \$800,000). Staff estimates a cost not to exceed \$200,000 for the rehabilitation of the 4 off-site units (\$50,000/unit). The possibility exists that the Agency will be able to rehabilitate more than 4 units, depending on the cost and the extent of the improvements. Sufficient low and moderate housing funds are available.

The MOU will subsequently be incorporated into an Owner Participation Agreement (OPA) that will be presented to the Agency for approval, which is tentatively scheduled for June 2004. The MOU does not prevent the City from exercising its independent judgment required to evaluate the proposed project. It is estimated that the proposed project upon full build out and sale will produce approximately \$71,507 annually in tax increment.

Included in the Council's agenda packet are the Shapell Industries of Northern California Project Information Summary, and a signed MOU indicating the developer's acceptance.

RECOMMENDATION: Adopt the resolution of the Redevelopment Agency approving a Memorandum of Understanding by and between the Redevelopment Agency of the City of Milpitas and Shapell Industries of Northern California.

RA6. REVIEW PROGRESS REPORT ON LIBRARY PROJECT (STAFF CONTACT: GREG ARMENDARIZ, 586-3220)

BACKGROUND: A progress report on the architect selection process and upcoming project milestones will be presented by staff at the Council meeting.

RECOMMENDATION: Note, receipt, and file Library Project progress report.

RA7. CITY OF MILPITAS FINANCIAL STATUS REPORT FOR THE NINE MONTHS ENDED MARCH 31, 2004 (STAFF CONTACT: EMMA KARLEN, 586-3145)

BACKGROUND: The Finance Department will present a review of the City's financial status for the nine months ended March 31, 2004.

RECOMMENDATION: Receive staff report.

***RA8. CITY OF MILPITAS INVESTMENT PORTFOLIO STATUS REPORT FOR THE QUARTER ENDED MARCH 31, 2004 (STAFF CONTACT: EMMA KARLEN, 586-3145)**

BACKGROUND: In compliance with the State of California Government Code and the City's Investment policy, the City of Milpitas Investment Report for the quarter ended March 31, 2004, is submitted for your review and acceptance.

The Portfolio Summary Report included in the Council's packet provides a summary of the City's investments by type. It lists the par value, market value, book value, percentage of portfolio, term, days to maturity and the equivalent yields for each type of investment. The Portfolio Details Report provides the same information for each individual investment in the City's portfolio as of March 31, 2004.

As of March 31, 2004, the principal cost and market value of the City's investment portfolio was \$285,374,453.43 and \$287,734,503.16 respectively. When market interest rates increase after an investment is purchased, the market value of that investment decreases. Conversely, when market interest rates decline after an investment is purchased, the market value of that investment increases. If the investments are not sold prior to the maturity date, there is no market risk. Therefore, in accordance with the City's investment policy, all investments are held until maturity to ensure the return of all invested principal.

The City's effective rate of return for the period ended March 31, 2004, was 2.78%. The comparative benchmarks for the same period were 1.22% for LAIF (Local Agency Investment Fund) and 1.56% for the average 2 year Treasury Note. Excluding the long-term GNMA securities and Repurchase Investment Agreement, the weighted average maturity of the portfolio was 669 days.

The investment portfolio is in compliance with the City's investment policy. A combination of securities maturing, new revenues, and tax receipts will adequately cover the anticipated cash flow needs for the next six months. Cash flow requirements are continually monitored and are considered paramount in the selection of maturity dates of securities.

RECOMMENDATION: Note, receipt, and file the investment report for the quarter ended March 31, 2004.

***RA9. ADOPT RESOLUTIONS APPROVING INITIAL ACCEPTANCES; CIVIC CENTER (PROJECT NO. 8026) (STAFF CONTACT: GREG ARMENDARIZ, 586-3220)**

BACKGROUND: The City Hall project has been completed and only three contracts involved with completing the third and fourth floors, remain open. The furniture contract will continue active until additional furniture is ordered and delivered for the City Hall lobby. The work performed by the two other contractors: ACCO and Royal Glass, has been successfully completed, including all punchlist work. This work has been inspected and approved by staff. Staff recommends initial acceptances for both of these contracts as follows:

1. ACCO - Staff recommends Initial Acceptance of the contract, and release of all the retention monies due to ACCO with the exception of \$32,000 of retention, for the 4th floor renovation, as allowed by the Public Contract code. This final retention will not be released until 35 days after the initial acceptance notice has been recorded at the County.
2. Royal Glass – Staff recommends Initial Acceptance of the contract, and release of all the retention monies, with the exception of \$30,000.00 retention, as allowed by the Public Contract code. This retention will be released 35 days after the initial acceptance notice has been recorded at the County.

RECOMMENDATION:

1. Approve initial acceptance of ACCO's contract and authorize the RDA Project Manager to file a Notice of Completion, and release \$86,594.15 from the retention account, remaining retention to be release in accordance with the Public Contract code;
2. Approve initial acceptance of Royal Glass contract and authorize the RDA project manager to file a Notice of Completion, and release retention in accordance with the Public Contract code.

RA10. AGENCY ADJOURNMENT TO 6:30 P.M., MAY 11, 2004, AND SUBSEQUENTLY TO 6:30 P.M. MAY 13, 2004, (IF NECESSARY) FOR BUDGET HEARINGS IN THE COUNCIL CHAMBERS

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

- * **5. AUTHORIZE MAYOR TO SIGN LETTER SUPPORTING AB 3011 (LAIRD): MOTOR VEHICLE LICENSE FEE FOR STREET IMPROVEMENTS AND MAINTENANCE: VICE MAYOR DIXON (STAFF CONTACT: CINDY MAXWELL, 586-3282)**

BACKGROUND: AB 3011 (Laird) would authorize the Santa Clara Valley Transportation Authority (VTA) to collect a fee of up to \$4 on all motor vehicles registered in Santa Clara County to fund a program of traffic congestion management activities and roadway improvements. A copy of the proposed letter and a fact sheet about the bill are included as attachments to the agenda packet.

RECOMMENDATION: Authorize the Mayor to sign a letter of support for AB 3011 (Laird).

Transportation Subcommittee

- * **6. APPROVE REVISED TRANSPORTATION POSITION STATEMENTS: TRANSPORTATION SUBCOMMITTEE (STAFF CONTACT: CINDY MAXWELL, 586-3282)**

BACKGROUND: The City Council previously approved a set of transportation statements that clarify the City's position on specific transportation issues and projects in a consistent and clear fashion. The Statements were updated and recently reviewed by the Transportation Subcommittee. The Subcommittee recommends approval of the revisions. The major changes:

- Added a statement to consider alternative transportation technologies when appropriate;
- Updated the Cross Connector project to include the preparation of a transit area plan around the Montague transit stations;
- Deleted discussions of the now completed Countywide Expressway Study and Best Practices Manual;
- Updated the I-680 High Occupancy Vehicle Lane project to reflect efforts to acquire funding for a soundwall in Sunnyhills and coordination of soundwall construction;
- Confirmed the City's commitment to provide 20% matching funds for the bike/pedestrian overcrossing at the Union Pacific railroad tracks; and,
- Added the City's approved priorities for the Valley Transportation Plan 2030 process.

RECOMMENDATION: Approve the proposed revisions to the Transportation Position Statements.

XV. UNFINISHED BUSINESS (NONE)

XVI. NEW BUSINESS

- * **7. ACCEPT CROWNE PLAZA EMPLOYEE'S DONATION TO S.A.F.E. NEIGHBORHOOD PREPAREDNESS PROGRAM (STAFF CONTACT: BILL WEISGERBER, 586-2811)**

BACKGROUND: Crowne Plaza employees have collected personal donations in the amount of \$260 be given to the Milpitas Fire Department as part of their corporate and community service. These donations are designated for the Strategic Actions For Emergencies (S.A.F.E.) Neighborhood Preparedness Program. The department is in receipt of the check, with funds to be utilized for Public Fire and Disaster Preparedness Education and instructional materials, benefiting the community at large.

RECOMMENDATION: Authorize Fire Department acceptance of Crowne Plaza employee's "S.A.F.E." Neighborhood Preparedness Program donation, in the amount of \$260 be utilized for Public Fire and Disaster Preparedness Education instructional materials.

XVII. ORDINANCES (NONE)

XVIII. RESOLUTIONS (NONE)

XIX. BIDS AND CONTRACTS

- * **8. AUTHORIZE THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH HARGIS & ASSOCIATES FOR ASSISTANCE WITH FIRE DEPARTMENT RECRUITMENTS (STAFF CONTACT: BILL WEISGERBER, 586-2811)**

BACKGROUND: Staff is requesting authorization to enter into an agreement with Hargis & Associates to assist City staff in developing job analysis, examinations and assessment centers for two upcoming recruitments (Fire Captain and Fire Engineer). Hargis & Associates has a proven record with Fire Department recruitments at all levels. Their primary focus during an assessment is at the test development stage where extra time is devoted checking details of test content and rating guidelines to deter any test challenges. If a challenge occurs, they will research it and produce a written response of their findings. With Hargis & Associates knowledge and methods, the City can offer a fair and meaningful recruitment. Staff feels that Hargis & Associates has proposed a fair fee of \$25,600 for the services they will be providing for the two recruitments. Funds are available in the Fire Department operating budget for these services.

RECOMMENDATION: Authorize the City Manager to execute an agreement with Hargis & Associates for assistance with Fire Department recruitments in an amount not to exceed \$25,600, subject to approval as to form by the City Attorney.

- * **9. AUTHORIZE THE CITY ENGINEER TO EXECUTE A CONTRACT CHANGE ORDER: PARALLEL FORCE MAIN (PROJECT NO. 6078) (STAFF CONTACT: STEVE ERICKSON, 586-3317)**

BACKGROUND: This substantially completed project provided a two-mile long, 36-inch diameter sanitary sewer force main from the Milpitas pumping station to the San Jose treatment plant. The project is in warranty, however there were problems with releasing trapped air within the new pipeline during operation. The project designer has recommended that additional air relief valves be installed and that modifications to the access hatch at the treatment plant be made to resolve this problem. The designer has also agreed to reimburse the City for the cost of these additional improvements. Therefore, this work would be at no additional cost to the City.

Staff recommends that additional work to add air relief valves and that modifications to the access hatch at the treatment plant be included in the project. Staff has negotiated a fee not to exceed \$17,795.00 with the Contractor for this additional work, and the approval of a contract change order is requested.

RECOMMENDATION: Authorize the City Engineer to execute a contract change order for Ranger Pipelines in the amount not to exceed \$17,795, subject to approval as to form by the City Attorney.

*** 10. APPROVE BUDGET APPROPRIATION AND AWARD CONSTRUCTION CONTRACT: HALL PARK WALKWAY (PROJECT NO. 5058) (STAFF CONTACT: GREG ARMENDARIZ, 586-3320)**

BACKGROUND: On March 16, 2004, the City Council approved the project plans and specifications and authorized the advertisement of the project for bids. This project provides a new concrete walkway including planting, irrigation and lighting across the Penitencia Creek and Hall Park Lagoon. Three sealed proposals were opened on Wednesday, April 14, 2004, ranging from \$288,170 to \$354,620. The lowest responsible bidder was JW Riley & Son, Inc. The Engineer's estimate for the work was \$262,800. The contractor's bid exceeds the Engineer's estimate by \$25,370. An evaluation of the bid shows that the planting work, electrical work, barrier fence work were underestimated and handrail work was overestimated. However, the contractor's bid was reasonable. Due to the walkway proximity to Curtner School, the work needs to be completed during summer vacation. The higher prices may also be reflected in the tight schedule. A budget appropriation in the amount of \$235,000 from the Park Fund is required to award the project.

RECOMMENDATION:

1. Appropriate \$235,000 from Park Fund.
2. Award the contract to JW Riley & Son, Inc. in the amount not to exceed \$288,170.00, subject to approval as to form by the City Attorney.

*** 11. AWARD CONSTRUCTION CONTRACT: SINGLEY AREA STREET REHABILITATION, PHASE III, PROJECT NO. 4200; MARYLINN DRIVE SIDEWALK (PROJECT NO. 4222); AND SPORTS CENTER MASTERPLAN IMPROVEMENT, PHASE I (PROJECT NO. 8149) (STAFF CONTACT: DOUG DE VRIES, 586-3313)**

BACKGROUND: On April 16, 2002, the City Council approved the project plans and specifications and authorized the advertisement of the project for bids. The project will provide improvements at various locations in the Singley Drive neighborhood. Specifically, the project involves reconstruction of sections of pavement, sidewalks, and curb and gutter in areas along Donahe Drive, Hamilton Avenue, Dundee Avenue, Parvin/Via Baja, and Sark, Perth, De Anza, Alisal, Del Vaile, and Fulton Courts

Other improvements include the reconstruction of the alley way between Milpitas Sports Center and North Park Victoria Drive to provide a second exit for vehicles from the Sports Center during major events. Also included is the construction of a missing section of sidewalk providing a continuous sidewalk along Marylinn Drive west of Railroad Avenue. A State Transportation Development Act grant was obtained for the sidewalk work.

The project was advertised and sealed proposals were opened on Tuesday, April 20, 2004. The proposals including the add alternate ranged from \$1,085,379.75 to \$1,477,726.00. The Engineer's estimate for the work was \$1,583,508.00. The low bidder was Fanfa, Inc. There are sufficient funds in the respective projects budgets for all of these expenses.

RECOMMENDATION: Award the contract including the add alternate to Fanfa, Inc. in the amount not to exceed \$1,085,379.75, subject to approval as to form by the City Attorney.

* **12. AWARD BID FOR PURCHASE OF ENGINEERING PLOTTER (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: Staff requested bids from six dealers on Purchasing's bidders list for a replacement 42" engineering plotter/printer equipment used to print large engineering drawings from CAD systems. The existing plotter/printer has been problematic for the past two years and has been deemed inoperable by factory service technicians. The following is the recap of bids received by the bidders which includes freight and tax:

California Survey & Drafting Supply	\$10,054.19
ADS Reprographics, Inc.	\$11,049.59
Surah, Inc.	\$11,079.39
PC Mall Government, Inc.	\$11,210.37
San Jose Blue	\$11,366.25
Peninsula Digital Imaging	\$13,861.41

There are sufficient funds available in three projects, Miscellaneous Minor Sewer Projects (Project No. 6057), Miscellaneous Minor Water Projects (Project No. 7066) and Desktop Technology (Project No. 8109) for this purchase.

RECOMMENDATION: Award the bid for the plotter/printer to California Survey & Drafting Supply as the lowest bidder in the amount of \$10,054.19 and authorize the purchase.

* **13. AUTHORIZE THE INSTALLATION OF A NETWORK FUSION LINK BETWEEN FIRE STATION ONE AND CITY HALL BY PROFESSIONAL CONVERGENCE SOLUTIONS FOR AN AMOUNT NOT TO EXCEED \$8,364.75 (PROJECT NO. 8093) (STAFF CONTACT: TERRY MEDINA, 586-2703)**

BACKGROUND: In fiscal year 1999/00, the City of Milpitas implemented a telephone system that supported the communications needs of the City through three Private Business Exchanges (PBX's). The system utilizes a combination of fiber optic cable and copper wire to provide connections between the City's facilities. Since the original installation efforts have continued to provide complete redundancy within the system for those instances where there is an equipment failure or a break in the fiber optic or copper cable that connects the various facilities.

Currently, there are three levels of hardware redundancy for the telephone system including back up computers for each of the three PBX's, spare communications cards and Uninterrupted Power Supplies (UPS) at each location. In addition, the City Council recently approved the establishment of a redundant connection between Fire Station One and SBC in case of a line break between the City Hall PBX and the Public Works PBX. This addition now allows each of the three PBX's to work independently and provides communication with SBC in the event of a breakdown of one of the PBX's or communication lines, but does not allow redundant Communication between the City's facilities. The final step in the communications redundancy process is to establish a network fusion link between Fire Station One and City Hall. This link will allow the three PBX's to operate completely independently while at the same time providing communications between all of the City's facilities and external agencies.

Professional Convergence Solutions (PCS) has provided the City with services related to the implementation of system redundancies in the past. In fact, PCS provided the programming necessary for establishing the direct link from Fire Station One to SBC. Additionally, PCS provides the annual maintenance support to the City for maintaining the City's PBX's. Funding for the installation of the Network Fusion Link between Fire Station One and City Hall is available in CIP 8093 Telecommunications Infrastructure.

RECOMMENDATION: Authorize the installation of a Network Fusion Link between Fire Station One and City Hall, by Professional Convergence Solutions, in an amount not to exceed \$8,364.75 from funding that is available in CIP 8093 Telecommunications Infrastructure.

XX. CLAIMS AND DEMANDS

*** 14. APPROVE PAYMENT REQUESTS: MISCELLANEOUS VENDORS / CONTRACTORS
(STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: In accordance with direction given by City Council at its August 15, 1995, meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

\$5,815.60 to Absolute Energy Solution, Inc. to purchase a 15KW standby generator to replace the existing standby generator on Monument Peak. The generator will serve as back up power supply for radio communications equipment for the Police Department. Absolute Energy Solution submitted the lowest bid. (Funds have been allocated and are available from State Asset Seizure Funds for this purchase.)

RECOMMENDATION: Approve the purchase request.

XXI. ADJOURNMENT TO 6:30 P.M., MAY 11, 2004, AND SUBSEQUENTLY TO 6:30 P.M. MAY 13, 2004, (IF NECESSARY) FOR BUDGET HEARINGS IN THE COUNCIL CHAMBERS

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MAY 18, 2004, AT 7:00 P.M.**

CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
April 20, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: APN #022-08-042

Negotiating Parties: City of Milpitas and County of Santa Clara

Agency Negotiator: Thomas J. Wilson

Under Negotiation: Terms and Conditions for Disposition or Lease

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: APN #86-12-015, 86-12-016, and 86-12-020

Negotiating Parties: Milpitas Redevelopment Agency/City and Abel Trust

Agency Negotiator: Thomas J. Wilson

Under Negotiation: Terms and Conditions for Acquisition of Property

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: Vacant Property N. Main Street (APN No. 2208003)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: Winsor and Rodriquez properties (adjacent to Main St. off ramp of Calaveras Blvd.) (APN Nos. 2824014, 2824020, 2824026 and 2824025)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Winsor, Rodriquez, Garbe's Towing and Economy Towing.

Agency Negotiators: Thomas J. Wilson/Greg Armendariz

Under Negotiation: Terms and conditions for acquisition of property and rental interests

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES: April 6, 2004

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

Commendations:

- Cast members of the Rainbow Theatre production of *Chicago*:

Coel Agustin	Jackie Holland	Keith Menconi
Casey Atud	Holly Howe	Jennifer Nguyen
Charlotte Beard	Sarah Hudson	Jamie Parreno
Samantha Beard	Deana Jensen	Kirstin Plato
Laura Castaneda	Macaela Jensen	Ryan Robinson
Zarina Dhami	Htoi Lahpai	Kristin Schmitz
Sarah Erbele	Robbie Lin	Peonie Seesurat
Johnson Eung	Bianca Martinez	Celeste Thompson
Conrad Gabriel	Danae Matthews	Lenine Umali
Julian Hilario, Jr.	Nicole Matthews	Anne Villaruz
Yvonne Hoang		

Proclamations:

- Volunteer Week, April 18-24, 2004 – recognizing City of Milpitas Volunteers
- Volunteer Month, April 2004 – recognizing Volunteer Center of Silicon Valley
- Alcohol Awareness Month, April 2004 – recognizing National Council on Alcoholism and Drug Dependence in the Silicon Valley

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. APPROVAL OF AGENDA

XI. CONSENT CALENDAR (Items with Asterisks)

XII. PUBLIC HEARINGS

1. **Approve Entertainment Event Permit for a Carnival Sponsored by the Milpitas Rotary Club: Wal-Mart/McCarthy Ranch Property: May 13-16, 2004 (Staff Contact: Gail Blalock, 586-3001)**
2. **Approve the Community Development Block Grant Funding for FY 2004-05 and Adopt the One-year Action Plan (Staff Contact: Felix Reliford, 586-3071 and Gloria Anaya, 586-3075)**
3. **Adopt Sixth Amendment to the County of Santa Clara Countywide Nondisposal Facility Element (Staff Contact Darryl Wong, 586-3345)**

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: April 6, 2004

RA4. APPROVAL OF AGENDA

**RA5. REVIEW DRAFT 2004-2009 CAPITAL IMPROVEMENT PROGRAM (CIP) REPORT
(STAFF CONTACT: MIKE MCNEELY, 586-3301 AND GREG ARMENDARIZ, 586-3320)**

RA6. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

- * 4. Approve the Mayor's Appointments and Reappointments to the Economic Development Commission: Mayor Esteves**

Parks, Recreation, and Cultural Resources Commission

- * 5. Approve the 2004 Parks, Recreation and Cultural Resources Commission Work Plan (Staff Contact: Bonnie Greiner, 586-3227)**

XV. UNFINISHED BUSINESS

- 6. Review Odor Control Comprehensive Action Plan Update (Staff Contact: Darryl Wong, 586-3345)**
- * 7. Approve Production and Distribution of Community Newsletter and Associated Costs (Staff Contact: Cindy Maxwell, 586-3282 and Thomas Wilson, 586-3050)**

XVI. NEW BUSINESS

- 8. Consideration of Street Sweeping as a Solid Waste Service (Staff Contact: Blair King, 586-3060)**
- * 9. Approve Marquee Request: Annell Spencer, Representing Friends of the Library (Staff Contact: Jennifer Tagalog, 586-3206)**

XVII. ORDINANCES

- * 10. Adopt Ordinance No. 38.763 (ZT2004-1) Amending Title XI, Chapter 10 (Planning, Zoning and Annexation) of the Municipal Code (Staff Contact: Staci Pereira, 586-3278)**
- * 11. Adopt Traffic Ordinance 43.200: Amendment To The Traffic Code: (Staff Contact: Mike McNeely, 586-3301)**

XVIII. RESOLUTIONS

- * 12. Adopt Resolution Approving Extension of Comcast Franchise (Staff Contact: Bill Marion, 586-2701)**
- * 13. Adopt Resolution Granting Final Acceptance: Calaveras Road Slope Repair, (Project No. 4029) (Staff Contact: Greg Armendariz, 586-3320)**

XIX. BIDS AND CONTRACTS

- * 14. Authorize the City Manager to Execute Revocable Permit With San Francisco Public Utilities Commission (Project No. 6082) (Staff Contact: Darryl Wong, 586-3345)
- * 15. Approve Lease Agreement with GTE Mobilenet of California (Staff Contact: Bill Marion, 586-2701)
- * 16. Approve Joint Powers Agreement between City Of Milpitas Recreation Services and City of Fremont - Tennis Center (Staff Contact: Rosana Cacao, 586-3207)
- * 17. Award Construction Contract: Street Trees And Mulch For Great Mall Parkway (Project No. 4133) (Staff Contact: Doug Devries, 586-3313)
- * 18. Authorize the City Manager to Execute an Agreement Amendment: Korve Engineering, Great Mall Parkway and Tasman/I880 Vehicle Capacity Improvements (Project No. 4178) (Staff Contact: Steve Erickson, 586-3317)
- * 19. Authorize the City Manager to Execute the Agreement: Lowney Associates, Great Mall Parkway and Tasman/I880 Vehicle Capacity Improvements, (Project No. 4178) (Staff Contact: Steve Erickson, 586-3317)
- * 20. Authorize the City Manager to Execute the Agreement Amendment: Korve Engineering, Right Turn Lane at Abel/Calaveras (Project No. 4186) (Staff Contact: Steve Erickson, 586-3317)
- * 21. Approve Agreement Amendment: Singley Area Street Rehabilitation - Phase III (Project No. 4200) (Staff Contact: Doug DeVries, 586-3313)
- * 22. Amend Master Services Agreement with Granicus, Inc. to Extend the Agreement through June 30, 2007, and Increase the Contract Amount by \$26,000 for Additional Video Streaming Equipment and Maintenance Charges (Project No. 8142), (Staff Contact: Terry Medina, 586-2703)

XX. CLAIMS AND DEMANDS

- * 23. Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Lou Zenzen, 586-3161)

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MAY 4, 2004, AT 7:00 P.M.**

CITY OF MILPITAS
Agenda Reports
Milpitas City Council Meeting
April 20, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

XII. PUBLIC HEARINGS

1. APPROVE ENTERTAINMENT EVENT PERMIT FOR A CARNIVAL SPONSORED BY THE MILPITAS ROTARY CLUB: WALMART/MCCARTHY RANCH PROPERTY: MAY 13-16, 2004 (STAFF CONTACT: GAIL BLALOCK, 586-3001)

BACKGROUND: The Milpitas Rotary Club has submitted an application for an Entertainment Event Permit to hold a Butler Amusement Carnival in the Wal-Mart parking lot at McCarthy Ranch, 301 Ranch Drive, on May 13-16, 2004. The Carnival would operate Thursday and Friday, May 13 and 14, from 3:00 p.m. until 11:00 p.m. and Saturday and Sunday, May 15 and 16, from 11:00 a.m. until 11:00 p.m.

The Rotary Club is also requesting waiver of any City fees for Fire standby personnel. The Fire Marshal has determined that based upon experience with past events and the additional security personnel and measures provided by the Rotary Club, the need for Fire Watch personnel is not necessary.

The application has been reviewed and approved, subject to conditions, by the various City departments and the public hearing has been advertised as required by City Ordinance. A copy of the application is included in the Council's agenda packets.

RECOMMENDATION:

1. Close the public hearing.
2. Approve the Entertainment Event Permit for the Milpitas Rotary Club for a Carnival on May 13-16, 2004, at the Wal-Mart parking lot at McCarthy Ranch, subject to the special conditions noted.

2. APPROVE THE COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING FOR FY 2004-05 AND ADOPT THE ONE-YEAR ACTION PLAN (STAFF CONTACT: FELIX RELIFORD, 586-3071 AND GLORIA ANAYA, 586-3075)

BACKGROUND: The purpose of this public hearing is to establish funding levels and uses of the Community Development Block Grant (CDBG) Program for fiscal year 2004-05 and to adopt the One-year Action Plan, which describes the eligible programs, projects and activities to be undertaken with CDBG funds in the next fiscal year. An application workbook was previously distributed to the Council that contains a memorandum discussing the general guidelines regarding the use of CDBG funds and a copy of each eligible application received.

CDBG Program

The City's estimated grant for FY 2004-05 is approximately \$711,000. Twenty-two (22) applications were received for CDBG funding. There are 19 applications requesting funding for Public Services and a total of \$106,650 is available for this funding category. A total of \$462,150 is available to fund Non-public Services.

At its meeting on March 3, 2004, the Community Advisory Commission (CAC) held a public hearing and reviewed the CDBG applications. The CAC has recommended \$711,000 in total funding, including \$121,650 (\$15,000 from CDBG General Program Administration funds for Project Sentinel's Fair Housing Activities) for Public Services and \$462,150 for Non-Public Services. The remaining \$127,200 of the grant is committed for program administration.

Included in the Council's agenda packets are the March 3, 2004, CAC minutes with the CAC's funding recommendations. All applicants have been notified of the City Council public hearing and have been advised to be present to answer any questions the Council might have.

Action Plan

The City of Milpitas One-Year Action Plan describes the eligible programs, projects and activities to be undertaken with the funds expected to be available during the 2004-05 program year and their relationship to the priority needs housing, homeless, and community development. The Action Plan is an addition to the required Five-year Consolidated Plan previously approved by the Department of Housing and Urban Development (HUD) for continued funding as an entitlement city.

In summary, the Action Plan identifies the federal, state and local resources that will be used to fund local programs and services, the strategic plan for implementation and the citizen participation process. As required by HUD, the Action Plan has been advertised for public review and comments for 30 days (March 5 through April 5, 2004).

Copies of the Action Plan were sent to 22 public service providers and copies were placed at City Hall and the public library. Public comments received have been incorporated into the Action Plan and to be forwarded to HUD by May 15, 2004. A draft of the One-Year Action Plan is included in the Council's agenda packet.

RECOMMENDATION:

1. Close the public hearing on the CDBG funding process and the Action Plan.
2. Approve the CAC recommendations for FY 2004-05 CDBG funding, as submitted.
3. Adopt the One-year Action Plan.

3. ADOPT SIXTH AMENDMENT TO THE COUNTY OF SANTA CLARA COUNTYWIDE NONDISPOSAL FACILITY ELEMENT (STAFF CONTACT DARRYL WONG, 586-3345)

BACKGROUND: This public hearing is required for Council approval of a Nondisposal Facility Element (NDFE) amendment to identify a recycling facility located in Milpitas. The original Santa Clara NDFE was adopted by the County of Santa Clara, and 13 cities and towns in the County including Milpitas, through Resolution 5387, in 1994. A memorandum detailing the amendment is included in the Council's packet. The County Recycling and Waste Reduction Commission of Santa Clara, of which Milpitas is a member has stated that the amendment will positively impact the region.

Environmental Management Systems at 945 Ames Avenue, Milpitas collects and sorts material from construction sites for reuse. The facility is required to apply and receive a State Solid Waste Facility permit in order to continue to operate. State law requires that any jurisdiction that will be the site of a new nondisposal facility, such as Environmental Management Systems, first adopt an NDFE amendment identifying the facility as part of the NDFE in order for a State Solid Waste Facility Permit to be issued for that site. A public hearing is required by the California Code of Regulations to receive testimony on any proposed NDFE amendment.

RECOMMENDATION:

1. Close the public hearing.
2. Adopt resolution approving the sixth amendment to the County of Santa Clara countywide nondisposal facility element.

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: April 6, 2004

RA4. APPROVAL OF AGENDA

RA5. REVIEW DRAFT 2004-2009 CAPITAL IMPROVEMENT PROGRAM (CIP) REPORT (STAFF CONTACT: MIKE MCNEELY, 586-3301 AND GREG ARMENDARIZ, 586-3320)

BACKGROUND: Staff will present the draft CIP. Based upon the direction received, a final preliminary CIP will then be presented to Council at the May 11, 2004, budget session.

The projects are arranged into six main categories: Community Improvements, Parks, Streets, Water, Sewer, and Storm Drain. The document includes a summary by categories and individual proposed project descriptions.

Only projects in the first year (2004-05) of the five-year CIP will be proposed for funding in the upcoming budget. The projected fiscal year 2004-05 expenditure for these projects, which consist mostly of projects begun in prior years, is \$16 million. The projects listed in subsequent years are shown for planning purposes and do not receive expenditure authority until approved by Council at a later time.

On March 30, the CIP Subcommittee reviewed a summary of the Program. On April 5, the Parks, Recreation, and Cultural Arts Commission reviewed the Parks projects. On April 14, the Planning Commission found the document to be in conformance with the General Plan.

RECOMMENDATION: Provide staff with direction and comments on the 2004-2009 Capital Improvement Program.

RA6. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

*** 4. APPROVE THE MAYOR'S APPOINTMENTS AND REAPPOINTMENTS TO THE ECONOMIC DEVELOPMENT COMMISSION: MAYOR ESTEVES**

BACKGROUND: For the Economic Development Commission, Mayor Esteves is recommending moving Christie Gammon from the Alternate 1 position to a regular position created by Joe Gigantino not seeking reappointment, moving Tomo Nguyen from the Alternate 2 position to Alternate 1, appointing Charlene Tsao to the Alternate 2 position, and reappointing Diane McDonough and Dr. Karl Black to new three-year terms. Copies of all current applications for this Commission are included in the Council's agenda packets.

RECOMMENDATION: Approve the Mayor's appointment of Christie Gammon to fill the vacancy created by Joe Gigantino for a term expiring April 2007; moving Tomo Tuong Nguyen from Alternate 2 to Alternate 1 for a term expiring April 2005; appointing Charlene Tsao to the Alternate 2 position for a term expiring April 2006; and reappointing Diane McDonough and Dr. Karl Black to new three-year terms expiring April 2007.

Parks, Recreation, and Cultural Resources Commission

*** 5. APPROVE THE 2004 PARKS, RECREATION AND CULTURAL RESOURCES COMMISSION WORK PLAN (STAFF CONTACT: BONNIE GREINER, 586-3227)**

BACKGROUND: Pursuant to the Parks, Recreation and Cultural Resources Commission (PRCRC) Bylaws, the Parks, Recreation and Cultural Resources Commission serves as an advisory body to the City Council on matters regarding the operation and maintenance of recreation, leisure services, historic preservation activities and the acquisition, planning and development of new and existing parks and facilities. The PRCRC Commission has developed an annual work plan to focus on projects and programs that benefit the community. For the current year, the PRCRC Commission held working sessions during their February and March meetings to develop the 2004 Work Plan, as shown below:

Short-term Goals

1. Art in your Park – work with the Arts Commission and the Milpitas Alliance for the Arts on implementation, creating checklist for proper neighborhood/community notification, input, meetings.
2. Joint meeting with BTAC – discuss Park Metro park plans, pedestrian over cross.
3. Create sub-committee: DeVries Property
4. Create Parks and Facility Master Plan

Long-term Goals

1. Parks and Trails
2. Implementation and Completion of Parks Master Plan
3. Explore methods of financing for Park Maintenance and Redevelopment.

Ongoing Tasks

1. Youth Sports Grant Fund Requests (as applied)
2. Child Care Grant Fund Requests (as applied)
3. City Park Tour (June meeting – every other year)
4. City Historical and Cultural Site Tour (June meeting – every other year)*
5. Park Maintenance Schedule – in working with the Parks Department, help create maintenance schedule for City parks as a preventative measure to ensure park quality, preservation of historic buildings. *Set priorities for Park Maintenance and Expansion.*
6. Park Construction and Expansion work along with Parks Department to provide feedback and input
7. Park Rehabilitation – provide feedback and input to the Parks Department

*Tour of Alviso Adobe and Community Garden in 2004

RECOMMENDATION: Approve the 2004 Parks, Recreation and Cultural Resources Commission Work Plan.

XV. UNFINISHED BUSINESS

6. REVIEW ODOR CONTROL COMPREHENSIVE ACTION PLAN UPDATE (STAFF CONTACT: DARRYL WONG, 586-3345)

BACKGROUND: This is an update of the odor control coordination activities. A copy of the Odor Action Plan is included in the Council packet. Some of the key events that have occurred during the past month include:

1. Completed execution of consultant agreement with Cal Recovery.
2. City Staff and odor consultant, Cal Recovery, visited the Newby Island landfill and compost facility to discuss and observe odor control best management practices.

3. BAAQMD continues to provide real time advisories of odor events to City staff, Local Enforcement Agency (LEA), and the possible odor generators including BFI Landfill and Compost, Zanker Landfill and Compost, San Jose/Santa Clara Water Pollution Control Plant, Cargill and Los Esteros Power Plant.
4. City Staff has requested potential odor sources to update and document Best Management Practices currently in use or planned.

The Bay Area Air Quality Management District (BAAQMD) has reported the following number of complaints logged in October: 96, November: 50, December: 16, January: 31, February: 11, March: 23, April: 8 as of April 6th.

RECOMMENDATION: Note receipt and file progress report.

* **7. APPROVE PRODUCTION AND DISTRIBUTION OF COMMUNITY NEWSLETTER AND ASSOCIATED COSTS (STAFF CONTACT: CINDY MAXWELL, 586-3282 AND THOMAS WILSON, 586-3050)**

BACKGROUND: On February 17, 2004, Vice Mayor Dixon brought to the Council for discussion a proposal to establish an in-house Milpitas City newsletter. On the 17th, staff was directed to evaluate the publication of a newsletter to be produced and printed in-house with contractual services for layout and writing.

Staff has analyzed the costs associated with the production of a Milpitas newsletter. The costs analysis for a newsletter is based on the following criteria:

- 4 issues annually
- Up to 12 pages in length per issue
- 23,000 copies per issue – 20,000 to be mailed and the remainder to be distributed at public facilities, in new resident packages, and at the Milpitas Chamber of Commerce
- Printed in-house – 4-color cover (2 pages); 2-color interior (up to 10 pages)
- Design template prepared by outside professional with in-house layout after first edition
- Writing for all issues by outside professional

The projected costs for “per issue” and “per year” are provided below:

Item	Cost/Issue (1st issue)	Cost/Issue (2 nd , 3 rd , & 4 th issue)	Cost/Year (4 issues)
Printing	\$4,500	\$4,500	\$18,000
Writing	\$1,750	\$1,750	\$7,000
Design/Layout	\$1,925	N/A	\$1,925
Mailing/Sorting	\$2,981	\$2,981	\$11,924
Total	\$11,156	\$9,321	\$38,849

Also on February 17th, Councilmember Gomez asked staff to evaluate the possibility of including existing publications as part of the newsletter, which might offset or reduce other costs. Staff believes that, based on timing, that there are a number of announcements and/or publications, which could be included in the newsletter which would, at a minimum, save mailing costs. An example would be the required Annual Water Quality Report that must be sent to all residents and businesses. Staff will continue to evaluate opportunities.

RECOMMENDATION: Approve the production of a Milpitas City newsletter for one year (4 issues) at the costs provided above with the costs to be shared half by the Redevelopment Agency and half by the City. In addition, staff recommends the approval of contract for the professional writing services with Ealasaid Haas.

XVI. NEW BUSINESS

8. CONSIDERATION OF STREET SWEEPING AS A SOLID WASTE SERVICE (STAFF CONTACT: BLAIR KING, 586-3060)

BACKGROUND: In order to create a sanitary environment and to meet various clean water requirements, Milpitas provides street sweeping services for residents and business via a contract with a private business, Enviro-Commercial Sweeping. Residential areas are swept twice per month. Commercial and industrial areas are swept four times per month. During the months of November and December, three residential areas with a high number of trees are swept weekly. In all, the contractor sweeps 9,596 curb miles, 840 intersections, and 108 parking lots annually.

In California, street sweeping has historically been considered a janitorial service, closely aligned with solid waste refuse service. As a result, it is exempt from public works rules and regulations; and no license is required for street sweeping. Additionally, California law – Public Resource Code 40059, 49300, and 40059 (a)(2) – allows solid waste services to be contracted without competitive bid and through exclusive franchises.

The contract with Enviro-Commercial Sweeping expired last June. The contract was extended to allow time for staff to research and investigate cost-saving alternatives.

Staff has prepared a recommendation for Council action that will reduce General Fund costs, fully maintain service levels, potentially improve service quality, and do so in a manner to minimize financial impacts on the municipal corporation, residents, and businesses. The proposal is to incorporate street sweeping as a service in the solid waste franchise agreement. The City's solid waste franchise provider, BFI, can provide street sweeping services at a competitive rate of \$17.87 per curb mile. BFI's cost quote of \$17.87 per curb mile is considered competitive. This conclusion is based on monitoring three different surveys of street sweeping costs conducted in 2001 and 2003. Based on a survey conducted by the City of Tulare in May 2003, the average cost of street sweeping is \$18.88. The BFI proposal is \$1.01 less than the average cost. However, BFI will forgo this charge through the term of its current franchise, which expires September 2, 2007, if the City extends the franchise for ten years, subject to additional solid waste amendments that the City wishes to impose. For the sake of discussion this is Option One. Alternatively, BFI will sweep the streets and charge residential and commercial costumers without a franchise extension. The approximate fee for residential costumers would be \$0.89 per month. There would be no charge until January 2005. This is Option Two. Either option would save the General Fund approximately \$225,000 annually.

It is recommended that Council direct staff to prepare the appropriate amendments to the BFI franchise to implement either Option One or Option Two.

Attached is a memorandum previously distributed to the City Council on this topic.

RECOMMENDATION: Direct that Street Sweeping be considered a solid waste function and implement street sweeping services via an amendment to the Solid Waste Franchise Agreement in accordance with Option One, no charge with a franchise extension, or Option Two, a charge without a franchise extension.

*** 9. APPROVE MARQUEE REQUEST: ANNELL SPENCER, REPRESENTING FRIENDS OF THE LIBRARY (STAFF CONTACT: JENNIFER TAGALOG, 586-3206)**

BACKGROUND: Annell Spencer, Friends of Library board member, has requested to use the City of Milpitas marquee to advertise the following:

Marquee Request (to be displayed 4/21 - 4/25)
Milpitas Library Book Sale
4/23, 7 pm to 9 pm
4/24, 10 am to 5 pm

4/25, 11 am to 3 pm

The City Council pursuant to Resolution No. 6310, Facility Use Rules and Regulations must approve all exceptions to the marquee policy.

RECOMMENDATION: Approve request for Friends of the Library to use city marquee (April 21-April 25) to promote book sale.

XVII. ORDINANCES

- * **10. ADOPT ORDINANCE NO. 38.763 (ZT2004-1) AMENDING TITLE XI, CHAPTER 10 (PLANNING, ZONING AND ANNEXATION) OF THE MUNICIPAL CODE (STAFF CONTACT: STACI PEREIRA, 586-3278)**

BACKGROUND: Ordinance 38.763 was introduced at the April 6, 2004, City Council meeting. This ordinance involves amendments to the Zoning Code that include regulations affecting single-family residences and public noticing procedures. At the April 6th meeting, the Council requested a minor revision to the definition of single housekeeping unit that included the removal of “sharing household activities and responsibilities such as meals, chores and expenses”. Planning staff has made this change, which is reflected in the revised ordinance included in the Council’s agenda packets.

RECOMMENDATION:

1. Waive full reading of ordinance; and
2. Adopt Ordinance No. 38.763 (Zoning Ordinance Text Amendment No. ZT2004-1).

- * **11. ADOPT TRAFFIC ORDINANCE 43.200: AMENDMENT TO THE TRAFFIC CODE: (STAFF CONTACT: MIKE MCNEELY, 586-3301)**

BACKGROUND: This ordinance is ready for final adoption amending the Traffic Code to provide for a traffic control revision adding N. Park Victoria Drive from Kirkwall Place to the North City Limits to Milpitas’ speed survey list enabling the use of radar for enforcement.

RECOMMENDATION:

1. Waive full reading of the ordinance; and
2. Adopt Ordinance 43.200 amending Chapter 100, Title V (Traffic) of the Milpitas Municipal Code.

XVIII. RESOLUTIONS

- * **12. ADOPT RESOLUTION APPROVING EXTENSION OF COMCAST FRANCHISE (STAFF CONTACT: BILL MARION, 586-2701)**

BACKGROUND: In 1983, the City adopted Chapter 22 of the Milpitas Municipal Code, providing a procedure for the granting of nonexclusive franchises for cable communications. Since this time, several cable operators have assumed the initial franchise, which is now held by Comcast. This agreement expired in April of 2003, and has been extended by Council action through April of 2004. The City has undertaken a franchise renewal process that included a formal needs assessment and review of the cable system. Based on the results of the needs assessment, Council found Comcast in violation of the terms of the existing franchise. Comcast has responded to the City on these noncompliance items and while not all items have been resolved, Comcast has committed to a plan to correct grounding issues and has facilitated an accounting review of franchise fee audit issue. Discussion is ongoing on the other items and two meetings on compliance have occurred.

In conjunction with continued franchise negotiations, Comcast has responded to the draft franchise documents. To date, two meetings have been held and a third is scheduled. In order to

ensure that the City may continue enforcement under the existing franchise while a new franchise is negotiated, an extension of the franchise is needed. The City Attorney and our consultant recommend this action to preserve the City's rights under the existing agreement until such time as a new agreement is in place. This extension would be for a period of one year unless superseded by a franchise renewal agreement and would extend the term of the original franchise from 20 to 22 years. Should the City be unable to come to agreement with Comcast within that time, the City has the option to follow the formal renewal process to include proceedings for a denial of franchise.

RECOMMENDATION: Adopt a resolution granting a one-year extension to the existing franchise agreement to allow for the completion of franchise negotiations.

- * **13. ADOPT RESOLUTION GRANTING FINAL ACCEPTANCE: CALAVERAS ROAD SLOPE REPAIR (PROJECT NO. 4029) (STAFF CONTACT: GREG ARMENDARIZ, 586-3320)**

BACKGROUND: This project, which was initially accepted on February 18, 2003, has passed the one-year warranty period. A final inspection has been made and the public improvements, which include storm drainage, roadway stabilization and slope stabilization improvements are satisfactory. Therefore, a final acceptance may be granted and the contractor's bond may be released.

RECOMMENDATION: Adopt resolution granting final acceptance and release of the bond.

XIX. BIDS AND CONTRACTS

- * **14. AUTHORIZE THE CITY MANAGER TO EXECUTE REVOCABLE PERMIT WITH SAN FRANCISCO PUBLIC UTILITIES COMMISSION (PROJECT NO. 6082) (STAFF CONTACT: DARRYL WONG, 586-3345)**

BACKGROUND: A San Francisco Public Utilities Commission (SFPUC) Revocable Permit is needed to construct on-site recycled water pipelines over the Hetch-Hetchy right-of-way at Sandalwood Park and the Escuela Parkway median in front of the high school. A Revocable Permit with SFPUC is included in the council packet.

RECOMMENDATION: Authorize the City Manager to execute the Revocable Permit with San Francisco Public Utilities Commission.

- * **15. APPROVE LEASE AGREEMENT WITH GTE MOBILENET OF CALIFORNIA (STAFF CONTACT: BILL MARION, 586-2701)**

BACKGROUND: GTE Mobilenet of California wishes to lease space at the Milpitas Sports Center for the installation of a cellular communications site. City staff has been working with GTE for several months and believes they have a design that meets the applicable Planning requirements. This lease is contingent upon GTE securing all necessary approvals and they will be required to complete the normal Planning and Permitting process. The lease will be for an initial period of five years with options for extension. The base rent will be \$19,800 annually, which will be subject to a 3% annual adjustment over the period of the lease. These terms are comparable to those found in a survey of other jurisdictions.

RECOMMENDATION: Authorize approval of lease agreement with GTE Mobilenet of California, subject to approval as to form by the City Attorney.

- * **16. APPROVE JOINT POWERS AGREEMENT BETWEEN CITY OF MILPITAS RECREATION SERVICES AND CITY OF FREMONT - TENNIS CENTER (STAFF CONTACT: ROSANA CACAO, 586-3207)**

BACKGROUND: The City of Milpitas Recreation Services has contracted with the City of Fremont Tennis Center to provide tennis lessons to the Milpitas community as a contracted instructor for the past six years. Both parties would like to extend the services through the Joint Powers Agreement, commencing on the date last signed by the parties, March 23, 2004, and shall continue until completion of all services in accordance with the requirements set forth in Exhibit "A" of this Agreement. This Agreement is included in the Council's packet for review and has been approved as to form by the City Attorney.

Milpitas Recreations Services handles all registration and collects all fees for classes and the City of Fremont Tennis Center instructors teach all lessons on City of Milpitas tennis courts. During FY 2003-04, over 500 people enrolled in tennis lessons and camps.

RECOMMENDATION: Approve agreement for City of Fremont - Tennis Center to provide tennis lessons through Milpitas Recreation Services from March 23, 2004, until termination by either party without cause upon thirty (30) days written notice to the other party.

* 17. **AWARD CONSTRUCTION CONTRACT: STREET TREES AND MULCH FOR GREAT MALL PARKWAY (PROJECT NO. 4133) (STAFF CONTACT: DOUG DEVRIES, 586-3313)**

BACKGROUND: On March 2, 2004, the City Council approved the plans and specifications for installation of Street Trees and Mulch for Great Mall Parkway and authorized to advertise for bid proposals. Work for this project includes planting and irrigation of street trees, and replacement of mulch on the medians, from I-880 to the south City limits. The project was advertised and sealed proposals were opened on Wednesday, April 7, 2004. Two proposals were received, from \$181,867.00 and \$228,523.00. The low bidder was Watkin & Bortolussi, Inc. The engineer's estimate for the work was \$181,000.00. There are sufficient funds in the project account for this work.

RECOMMENDATION: Award contract to Watkin & Bortolussi, Inc., in the amount of \$181,867.00, subject to approval as to form by the City Attorney.

* 18. **AUTHORIZE THE CITY MANAGER TO EXECUTE AN AGREEMENT AMENDMENT: KORVE ENGINEERING, GREAT MALL PARKWAY AND TASMAN/I880 VEHICLE CAPACITY IMPROVEMENTS, (PROJECT NO. 4178) (STAFF CONTACT: STEVE ERICKSON, 586-3317)**

BACKGROUND: On October 25, 2001, City Council awarded a consultant contract to Korge Engineering for the design of Great Mall Parkway and Tasman/I880 Vehicle Capacity Improvements. Staff recommends that Korge Engineering perform additional design services to incorporate the new light rail improvements into the intersection design, and to incorporate 237/880 Interchange Stage C change order work into the design of the southbound off ramp. Additionally, Caltrans requires a project study report (PSR) be completed as part of their permit approval for this project. Korge Engineering will provide assistance in preparing the PSR for this project. An agreement amendment with Korge Engineering is proposed for these additional services. Staff has negotiated a scope and fee not to exceed \$27,000.00, which is considered reasonable for the work. There are sufficient funds in the project budget to cover this additional expense.

RECOMMENDATION: Authorize the City Manager to execute the agreement amendment with Korge Engineering, in the amount of \$27,000.00, subject to approval as to form by the City Attorney.

* 19. **AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT: LOWNEY ASSOCIATES, GREAT MALL PARKWAY AND TASMAN/I880 VEHICLE CAPACITY IMPROVEMENTS (PROJECT NO. 4178) (STAFF CONTACT: STEVE ERICKSON, 586-3317)**

BACKGROUND: This project is included in the current five-year Capital Improvement Program (CIP). The completed project will provide improved traffic capacity for the Great Mall Parkway and I880 Interchange. Improvements include a free turning right lane from eastbound Tasman onto southbound I880, and the addition of a third eastbound through lane on Tasman at the northbound on ramp to I880. The project is located within Caltrans right of way, and their approval is required. A geotechnical/soils investigation will be required to complete the project design.

Staff has interviewed several professional consultants in conformance with the City's consultant selection process, and recommends that Lowney Associates provide the required geotechnical services. Staff has negotiated a scope and fee not to exceed \$27,000.00. The fee is considered reasonable for the work involved, and there are sufficient funds in the project budget to cover this cost.

RECOMMENDATION: Authorize the City Manager to enter into the agreement with Lowney Associates in the amount of \$27,000.00, subject to approval as to form by the City Attorney.

*** 20. AUTHORIZE THE CITY MANAGER TO EXECUTE AGREEMENT AMENDMENT: KORVE ENGINEERING, RIGHT TURN LANE AT ABEL/CALAVERAS PROJECT NO. (4186) (STAFF CONTACT: STEVE ERICKSON, 586-3317)**

BACKGROUND: On March 29, 2002, City Council awarded a consultant contract to Korve Engineering for the design of right turn lane at Abel/Calaveras Boulevard. Staff recommends that Korve Engineering perform additional services to provide right of way engineering, traffic analysis, pavement design and assistance to City staff in obtaining Caltrans approval. An agreement amendment with Korve Engineering is proposed for these additional services. Staff has negotiated a scope and fee not to exceed \$25,000, which is considered reasonable for the work. There are sufficient funds in the project budget to cover this additional expense.

RECOMMENDATION: Authorize the City Manager to execute the agreement amendment with Korve Engineering, in the amount of \$25,000, subject to approval as to form by the City Attorney.

*** 21. APPROVE AGREEMENT AMENDMENT: SINGLEY AREA STREET REHABILITATION - PHASE III (PROJECT NO. 4200) (STAFF CONTACT: DOUG DEVRIES, 586-3313)**

BACKGROUND: On November 4, 2003, the City entered into an agreement with DE Group for design of Singley Area Street Rehabilitation Phase III (Project No. 4200). It is now recommended to amend the agreement for the consultant to provide additional services to design Marylinn Drive Sidewalk, Project No. 4222, and include additional roadway in the Singley area due to its deteriorated condition. The consultant submitted a proposed fee of \$13,200 to perform the additional scope of services. The consultant has also agreed to increase its professional liability insurance coverage to \$2 million from the standard amount of \$1 million based on the revised estimated cost of construction. There are sufficient funds in the project budgets to perform the services.

RECOMMENDATION:

1. Approve amendment No. 1 to the agreement with DE Group.
2. Authorize the City Manager to execute the amendment, subject to approval by the City Attorney as to form.

*** 22. AMEND MASTER SERVICES AGREEMENT WITH GRANICUS, INC. TO EXTEND THE AGREEMENT THROUGH JUNE 30, 2007 AND INCREASE THE CONTRACT AMOUNT BY \$26,000 FOR ADDITIONAL VIDEO STREAMING EQUIPMENT AND**

MAINTENANCE CHARGES (PROJECT NO. 8142), (STAFF CONTACT: TERRY MEDINA, 586-2703)

BACKGROUND: In July 2003, the City of Milpitas implemented a project for the live web streaming of City Council and Planning Commission meetings on the internet. Granicus Inc. was selected as the vendor for providing off site media storage and the internet bandwidth necessary to provide the live streaming of the City Council and Planning Commission meetings. The original project was scaled to support 6 months of video streaming media storage at which time the video would be removed to archival storage. During the past nine months Information Services has been tracking the number of times that the City Council and Planning Commission meeting videos are accessed on the City's website. Those videos consistently rank amongst the top 5 pages that are viewed on the City's website. In order to continue to provide the video streaming services and access to the archived meeting videos it is necessary to purchase additional storage hardware, extend the current agreement and increase the amount of the current agreement by \$26,000.

The term of the Master Service Agreement will expire in May 2004 and requires renewal to ensure continuation of the live web streaming of City Council meetings, Planning Commission meetings and special City events. It is also necessary to acquire additional storage hardware that will be maintained by the City for accessing video archives that are older than six months. Granicus Inc. has also agreed to extend the current maintenance agreement for an additional three years yet only charge the City for the cost of two years of maintenance. The total costs for the additional hardware and three years of maintenance support will not exceed \$26,000. There are sufficient funds available in Capital Improvement Program 8142 (City Hall Technology) to support this request.

Approval of the 1st Amendment to the Master Service Agreement will provide continued video streaming capabilities and media storage for the next three years. Additionally, the approval of the 1st Amendment to the Master Service Agreement will provide one year of free maintenance and maintenance coverage through June 30, 2007.

RECOMMENDATION: Authorize the City Manager to approve the 1st Amendment to the Master Service between Granicus Inc. and the City of Milpitas extending the term through June 2007 and increasing the agreement by \$26,000.

XX. CLAIMS AND DEMANDS

*** 23. APPROVE PAYMENT REQUESTS: MISCELLANEOUS VENDORS / CONTRACTORS (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: In accordance with direction given by City Council at its August 15, 1995, meeting, Purchasing has prepared the following purchase request over \$5,000.00 for approval:

\$5,298.84 to Edward S Walsh, Co. to purchase a large 8-inch record all combination water meter for the Utility Maintenance Function. (Funds are available from the Public Works Department operating budget for this purchase.)

RECOMMENDATION: Approve the purchase request.

XXI. ADJOURNMENT

**CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
April 6, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard**

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

(Pursuant to Government Code Section 54956.9[c])

Initiation of litigation: one case

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: City of Milpitas property (APN Nos. 2208041 and 2208003)

Negotiating Parties: City of Milpitas and Santa Clara County

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for sale or lease of property

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: Vacant Property N. Main Street (APN No. 2208003)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: Winsor and Rodriquez properties (adjacent to Main St. off ramp of Calaveras Blvd.) (APN Nos. 2824014, 2824020, 2824026 and 2824025)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Winsor, Rodriquez, Garbe's Towing and Economy Towing.

Agency Negotiators: Thomas J. Wilson/Greg Armendariz

Under Negotiation: Terms and conditions for acquisition of property and rental interests

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES: March 16, 2004, and March 22, 2004

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

Commendation:

Steven Ybarra, returning from service in Iraq (U.S. Army)

Proclamations:

- Arbor Day, April 17, 2004
- Scleroderma Awareness Month, June 2004
- Month of the Young Child & Child Abuse Prevention Month, April

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. APPROVAL OF AGENDA

XI. CONSENT CALENDAR (Items with Asterisks)

XII. PUBLIC HEARING

1. **Introduce Ordinance No. 124.26 Amending Title XI, Chapter 30 (signs) of the City of Milpitas Municipal Code, a Sign Ordinance Amendment to Increase the Number of Freestanding Signs in the Town Center Zoning District (Staff Contact: Troy Fujimoto, 586-3287)**
2. **Adopt Negative Declaration (EA2004-1) and Introduce Ordinance No. 38.763 (ZT2004-1) Amending Title XI Chapter 10 (Planning, Zoning and Annexation) of the Municipal Code Relating to Regulation of Single-Family Residential Districts and Procedures for Providing Public Notice (Staff Contact: Staci Pereira, 586-3278)**

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: March 16, 2004

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

- *RA5. Authorize Request For Proposals: Milpitas Public Library and Midtown Parking Structure (Staff Contact: Greg Armendariz 586-3220, Mark Rogge 586-3257)**
- *RA6. Approve Change Order and Purchase Orders; Civic Center Project No. 8026 (Staff Contact: Greg Armendariz, 586-3220)**
- *RA7. Authorize an Agreement with Stradling Yocca Carlson & Rauth to Review Redevelopment Practices and Instruments to Incur and Sustain Indebtedness and Related Redevelopment Issues for an Amount Not to Exceed \$25,000 (Staff Contact: Blair King, 586-3060)**
- *RA8. Authorize the Executive Director/City Manager to Engage Dana Property Analysis for Appraisals of Six Separate City Owned properties in an Amount Not to Exceed \$37,000: APN 22-02-047, 28-12-011, 28-24-019, 86-11-008, 26-13-033, 86-02-061 (Staff Contact: Blair King, 586-3060)**

RA9. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

- 3. Approve the Designation of City of Milpitas Holiday Honoring Cesar Chavez: Mayor Jose Esteves**
- * 4. Approve the Mayor's Appointment to the Recycling and Source Reduction Advisory Commission: Mayor Esteves**
- 5. Approve Contribution to Rancho Milpitas Middle School Yearbook Project from the Council Community Promotions Account: Mayor Esteves**
- * 6. Approve a Resolution in Support for Federal Transportation Reauthorization: Mayor Jose Esteves**

Economic Development Commission

- 7. Select Consultant and Approve Contract For Preparation of Economic Development Plan: Economic Development Commission (Staff Contact: Cindy Maxwell, 586-3282)**

Library Advisory Commission

- * 8. Approve the 2004 Library Advisory Commission Work Plan (Staff Contact: Aaron Bueno and Marilyn Hay, Commission Chair, 586-3226)**

XV. UNFINISHED BUSINESS (NONE)

XVI. NEW BUSINESS

- 9. Review and Approve Ethics Stakeholder Report (Staff Contact: Tambri Heyden, 586-3280)**
- * 10. Approve Water Supply Assessment for Elmwood Residential and Commercial Project (Staff Contact: Darryl Wong 586-3345)**
- * 11. Theme Selection for the 2005 City Calendar (Staff Contact: Samu Tiumalu, 586-3222)**
- 12. Approve Staffing Changes to Support the Capital Improvement Program and a Reorganization of the Traffic Section in Engineering Division (Staff Contact: Mike McNeely, 586-3301)**

XVII. ORDINANCES

- 13. Introduce Traffic Ordinance 43.200: Amendment to the Traffic Code (Staff Contact: Mike McNeely, 586-3301)**

XVIII. RESOLUTIONS

- * 14. Resolution Granting Initial Acceptance: Playground Equipment Upgrade (Project No. 5077) (Staff Contact: Greg Armendariz, 586-3220)**
- * 15. Resolution Granting Initial Acceptance: Cathodic Protection System Repairs (Project No. 7050) (Staff Contact: Greg Armendariz 586-3220).**

- * 16. Resolution Granting Final Acceptance: North Milpitas Boulevard Median Landscape Renovations (Project No. 4140) (Staff Contact: Greg Armendariz, 586-3220)

XIX. BIDS AND CONTRACTS

- * 17. Authorize the City Manager to Engage MuniFinancial to Assist with Maintenance Cost Strategies and Cost Sharing Spreads (Staff Contact: Blair King 586-3061).
- * 18. Approve Agreement Amendment With San Jose Water Co. For Printing, Processing, Mailing And Remittance Processing Of Utility Bills (Staff Contact: Emma Karlen, 586-3125)
- * 19. Authorize the City Manager to Execute an Agreement: Treadwell & Rollo, Library Pre-design (Project No. 3394) (Staff Contact: Steve Erickson, 586-3317)
- * 20. Authorize the City Manager to Execute an Agreement: Lowney Associates, Abel/Calaveras Right Turn Lane (Project No. 4186) (Staff Contact: Steve Erickson, 586-3317)
- * 21. Authorize the City Manager to Execute an Agreement: Lowney Associates, Main Sewage Pump Station Site Improvements (Project No. 6079) (Staff Contact: Steve Erickson, 586-3317)
- * 22. Authorize the City Manager to Execute Agreement: Overland, Pacific & Cutler, Midtown Parking Structure Right-of-Way and Calaveras and Abel Street Right Turn (Project Nos. 8154 & 4186) (Staff Contacts: Mike McNeely 586-3301 and Greg Armendariz, 586-3220)
- * 23. Award Bid for Printing the Milpitas Activity Guide (Staff Contact: Lou Zenzen, 586-3161)
- * 24. Award Bid for Traffic Signal Head Painting (Projects Nos. 4109 and 4167) (Staff Contact: Lou Zenzen, 586-3161)
- * 25. Award Bid for Audible Pedestrian Signals (Project No. 4173) (Staff Contact: Lou Zenzen, 586-3161)

XX. CLAIMS AND DEMANDS

- * 26. Approve Payment Requests: Miscellaneous Vendors /Contractors (Staff Contact: Lou Zenzen, 586-3161)

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, APRIL 20, 2004, AT 7:00 P.M.**

CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
April 6, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

XII. PUBLIC HEARING

1. INTRODUCE ORDINANCE NO. 124.26 AMENDING TITLE XI, CHAPTER 30 (SIGNS) OF THE CITY OF MILPITAS MUNICIPAL CODE, A SIGN ORDINANCE AMENDMENT TO INCREASE THE NUMBER OF FREESTANDING SIGNS IN THE TOWN CENTER ZONING DISTRICT (STAFF CONTACT: TROY FUJIMOTO, 586-3287)

BACKGROUND: In 1989, the City Council adopted a policy establishing five (5) sub-areas within the Town Center zoning district. The purpose of the policy was to allow each sub-area the ability to have one freestanding sign. Prior to the adoption of the policy, the entire Town Center District was limited to one freestanding area identification sign.

The five Town Center sub-areas are:

- Beresford Square shopping center
- Shapell office building parcel
- Town Center Phase III parcel (now developed with townhomes as "Beresford Village")
- Town Center shopping complex
- Hotel and office area (Town Center District east of Hillview Drive)

The applicant is requesting the Sign Ordinance be amended to recognize the commercial sub-areas as they currently exist. The request also includes a proposal to allow up to three freestanding signs for the Town Center shopping center. This would be accomplished by allocating the sign allowance for Phase III that was never used to the Town Center shopping center and allowing a new third sign. This would net one additional sign in the District above what was previously allowed.

Because this amendment is allowing one additional sign for the district, the sign is categorically exempt from CEQA review pursuant to Section 15311, Class 11 (accessory structures).

Staff recommends approval of the ordinance amendment based on the City granting a freestanding sign for Phase III that was never used and if this project was located anywhere else in the City, based on the number of street frontages and the amount of street frontage, the development would be allowed to have three (3) freestanding signs.

RECOMMENDATION:

1. Close the Public Hearing.
2. Waive reading beyond the title and introduce Ordinance No. 124.26.

2. ADOPT NEGATIVE DECLARATION (EA2004-1) AND INTRODUCE ORDINANCE NO. 38.763 (ZT2004-1) AMENDING TITLE XI CHAPTER 10 (PLANNING, ZONING AND ANNEXATION) OF THE MUNICIPAL CODE RELATING TO REGULATION OF SINGLE-FAMILY RESIDENTIAL DISTRICTS AND PROCEDURES FOR PROVIDING PUBLIC NOTICE (STAFF CONTACT: STACI PEREIRA, 586-3278)

BACKGROUND: Since August of 2002, staff has prepared two ordinances (Nos. 38.760 and 38.761) which were part of ongoing, necessary amendments to the zoning code to improve its effectiveness as a regulatory tool, recognize it as a dynamic and living document and phase the

cost and effort of a comprehensive update. The third phase of zoning code text amendments (Ordinance No. 38.763) was spurred by community concerns of overcrowding in residential neighborhoods and its impact on parking.

At a Community Advisory Commission Town Hall meeting on October 9, 2003, the City's limited authority to regulate occupancy in residential homes was discussed. This is based on federal and state laws with which the City's zoning code family definition does not comply. To address this problem, staff is proposing to amend the definition of family and other amendments that will assist in ensuring that a single-family dwelling is occupied in such a manner as to retain the character of the single-family neighborhood and minimize parking impacts. The amendments proposed would have the following significant effects on single-family residences:

- No longer allow a residence to be converted into or function as several independent living units or the rental of rooms with separate external entrances and compartmentalized common areas by requiring all occupants to function as a single housekeeping and by permitting only 1 kitchen per dwelling; and
- Require 1 parking space on-site for each room rented in a boarding house (where meals are included with rent), which is in addition to the 2 parking spaces required for the dwelling unit.

To address an unrelated issue, staff is proposing to modify the location of the legal notice postings from the project vicinity to the project site and establish criteria for sign postings based on size of property and number of street frontages. An Initial Study and Draft Negative Declaration were prepared for the proposed ordinance. The commenting period began on February 5, 2002 and closed on February 25, 2004. Staff did not receive any comments from the public during the comment period. The impacts to aesthetics, housing, transportation and traffic were determined to be less than significant.

The Planning Commission held a public hearing and discussed proposed Ordinance No. 38.763 and related Draft Negative Declaration at their meeting of February 25, 2004 where the item was continued to allow review by the Community Advisory Commission (CAC) and for additional research to be prepared. On March 3, 2004, the CAC recommended to prohibit garage conversions altogether rather than allow the partial conversions proposed in the amendment. During the Planning Commission's subsequent review on March 24, 2004, the Planning Commission voted (4-3) to recommend continuance of garage conversions given the public hearing comments about garage conversions being affordable housing alternatives and feelings that disallowing them will not solve the parking issues. Thus, staff has eliminated the two enclosed parking requirement for single-family dwellings from the proposed ordinance, which will result in the continued allowance of garage conversions. Further discussion and details of the proposed text amendments are incorporated into the Council's agenda packet.

RECOMMENDATION:

1. Close the public hearing.
2. Adopt the Negative Declaration (EIA No. EA2004-1)
3. Introduce Ordinance No. 38.763 (Zoning Ordinance Text Amendment No. ZT2004-1) and waive reading beyond the title

XIII. JOINT REDEVELOPMENT AND AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: March 16, 2004

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

***RA5. AUTHORIZE REQUEST FOR PROPOSALS: MILPITAS PUBLIC LIBRARY AND MIDTOWN PARKING STRUCTURE (STAFF CONTACT: GREG ARMENDARIZ 586-3220, MARK ROGGE 586-3257).**

BACKGROUND: On February 17, 2004, the City Council approved the Library Building Program and directed staff to prepare a Request For Proposals (RFP) to select the design Architect. Staff revised the RFP document and consultant contract after reviewing and benchmarking the documents against those of several other cities. Several revisions were made to take advantage of experience learned on past and current projects. The City Attorney's office also reviewed the revised documents.

A summary and highlights of the RFP and contract documents will be presented at the Council meeting. A copy of the RFP documents is included in the Council packet, along with a summary of key elements of the RFP for the Library Project.

The library requires expertise on library functions, as well as historic building preservation/restoration. The design of the Midtown parking garage requires a different set of expertise for efficient parking structure design. Therefore, two different architects, and accordingly two RFPs are proposed, one for the Library and a second one for the Midtown parking structure. The architect selection process for the Library will precede that of the Parking Structure, so that work effort will be prioritized to focus on the Library design that has the most impact on schedule.

Staff presented the consultant selection strategy, highlights of the RFP, contract, process, and schedule to the Library Subcommittee on March 23, 2004. The Library Subcommittee recommended that the City Council approve, and directs staff to issue, the RFPs.

Staff will recommend creating a new Capital Improvement Project for the Library and Midtown Parking Structure, in the upcoming FY 04/05 Capital Improvement Program.

RECOMMENDATION:

1. Approve the Request For Proposals (RFP) for the new Library and direct staff to issue the RFP.
2. Approve the Request For Proposals (RFP) for the new Midtown parking structure and direct staff to issue the RFP.

***RA6. APPROVE CHANGE ORDER AND PURCHASE ORDERS; CIVIC CENTER PROJECT NO. 8026 (STAFF CONTACT: GREG ARMENDARIZ, 586-3220)**

BACKGROUND: One change order is recommended for approval at this time with Royal Glass. The work is to provide additional flashing, caulking and sealing at the Rotunda roof not included in the original contract work. Although no rain water intrusion has been experienced, water from pressurized window washing equipment at a unique angle, could cause water intrusion. This change order has been negotiated for \$2,559 and is reasonable for the work involved.

Three purchase orders are also recommended for providing:

- (1) additional lights, wiring and controls in the building permit counter area of the lobby (\$4,714);
- (2) emergency lighting in the telecommunications rooms on each floor (\$3,610) and;
- (3) placement of concrete walkway, regarding and landscaping, and installation of concrete monument at War Memorial, based on time and materials not to exceed \$15,000.

The remaining project contingency is \$61,262, after approval of the above change order and purchase orders.

RECOMMENDATION: Approve one change order and three purchase orders.

- *RA7. AUTHORIZE AN AGREEMENT WITH STRADLING YOCCA CARLSON & RAUTH TO REVIEW REDEVELOPMENT PRACTICES AND INSTRUMENTS TO INCUR AND SUSTAIN INDEBTEDNESS AND RELATED REDEVELOPMENT ISSUES FOR AN AMOUNT NOT TO EXCEED \$25,000 (STAFF CONTACT: BLAIR KING, 586-3060)**

BACKGROUND: Health and Safety Code Section 33675 requires that Redevelopment Agencies make an annual claim to receive tax increment revenue by filing a "Statement of Indebtedness" and "Reconciliation Statement" with the County Auditor's office. This requirement has led to the development of commonly accepted documents used by practitioners of redevelopment to secure and sustain debt such as "cooperation agreements" promissory notes, and "Public Works Agreements" between the Agency and the City. During the course of the development of the Eighth Amendment to the Redevelopment Plan, staff concluded that it would be prudent to review the instruments and techniques that the Agency uses to secure and sustain its debt pursuant to Section 33675.

Therefore, it is proposed to retain the services of Stradling Yocca Carlson & Rauth to perform work reviewing redevelopment financial instruments and techniques of incurring and sustaining indebtedness. It is proposed that a maximum amount of \$25,000 be allocated for this work. This sum is available in unexpended funds set aside for legal assistance for the Eighth Amendment to the Redevelopment Plan.

RECOMMENDATION: Authorize the Executive Director to execute an agreement with Stradling Yocca Carlson & Rauth to perform work reviewing redevelopment financial instruments and techniques of incurring and sustaining indebtedness and other related redevelopment issues.

- *RA8. AUTHORIZE THE EXECUTIVE DIRECTOR/CITY MANAGER TO ENGAGE DANA PROPERTY ANALYSIS FOR APPRAISALS OF SIX SEPARATE CITY OWNED PROPERTIES IN AN AMOUNT NOT TO EXCEED \$37,000: APN 22-02-047, 28-12-011, 28-24-019, 86-11-008, 26-13-033, 86-02-061 (STAFF CONTACT: BLAIR KING, 586-3060)**

BACKGROUND: As part of the continuing process of implementing plans and procedures by which the financial capacities of the City and the Milpitas Redevelopment Agency can be restructured and expanded to fully realize the benefits of the 8th Amendment of the Redevelopment Plan to meet budget strategies and to facilitate the most efficient development of major capital projects, staff is exploring the positive financial impacts of transferring certain real property owned by the City of Milpitas to the Milpitas Redevelopment Agency. To complete the analysis, a determination of the properties market value is needed. Staff recommends that the property appraisal services of Mr. Paul Talmage, MAI of Dana Property Analysis be retained. Staff has negotiated an agreement with Dana Property to prepare "restricted" report appraisals for six properties at a cost not to exceed \$37,000. Sufficient funds are available in account number 390-300-4237. The six properties are identified as:

APN 22-02-047 - Police station and public works yard
APN 28-12-011 - City Hall, community center, library
APN 28-24-019 - Senior Center
APN 86-11-008 - Fire Station 1
APN 26-13-033 - Fire Station 3
APN 86-02-061 - Fire Station 4

RECOMMENDATION: Authorize the Executive Director/City Manager to enter into an agreement with Dana Property to prepare appraisals for certain real property in an amount not exceed \$37,000.

RA9. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

3. APPROVE THE DESIGNATION OF CITY OF MILPITAS HOLIDAY HONORING CESAR CHAVEZ: MAYOR JOSE ESTEVES

BACKGROUND: Mayor Esteves requests the Council consider a new paid City holiday – Cesar Chavez’s birthday, March 31st – in recognition of Cesar Chavez, the late humanitarian and farmworker leader.

March 31st is a paid holiday for the State of California and the County of Santa Clara. Included in Council’s agenda packet is background information regarding the recognition of Cesar Chavez with a paid holiday for public sector employees.

RECOMMENDATION: Approve March 31st as a paid holiday for the City of Milpitas and initiate the appropriate “meet and confer” procedures with the City’s employee labor associations to provide for a Milpitas’ first annual Cesar Chavez paid holiday on March 31, 2005.

*** 4. APPROVE THE MAYOR’S APPOINTMENT TO THE RECYCLING AND SOURCE REDUCTION ADVISORY COMMISSION: MAYOR ESTEVES**

BACKGROUND: Mayor Esteves is recommending the appointment of Ed Blake, Jr. to a business representative vacancy on the Recycling and Source Reduction Advisory Commission. A copy of Mr. Blake’s application is included in the Council’s agenda packets.

RECOMMENDATION: Approve the Mayor’s appointment of Ed Blake, Jr., to the Recycling and Source Reduction Advisory Commission for a term expiring October 2005.

5. APPROVE CONTRIBUTION TO RANCHO MILPITAS MIDDLE SCHOOL YEARBOOK PROJECT FROM THE COUNCIL COMMUNITY PROMOTIONS ACCOUNT: MAYOR ESTEVES

BACKGROUND: Mayor Esteves received a letter from the Rancho Milpitas Middle School Yearbook staff requesting a donation to their yearbook project. The yearbook staff worked to raise money to help pay for the yearbook, and someone broke into the school and took the money along with two digital cameras. Mayor Esteves is asking that the Council authorize a contribution of \$100 to the Rancho Milpitas Middle School Yearbook Project from the Council’s Community Promotions account. Copies of the letter from the yearbook staff, an article, and a letter to the editor of the Milpitas Post about the burglary are included in the Council’s agenda packets.

RECOMMENDATION: Approve a contribution of \$100 to the Rancho Milpitas Middle School Yearbook Project from the Council’s Community Promotions account.

*** 6. APPROVE A RESOLUTION IN SUPPORT FOR FEDERAL TRANSPORTATION REAUTHORIZATION: MAYOR JOSE ESTEVES**

BACKGROUND: The National League of Cities is encouraging cities to adopt a Resolution supporting an adequately funded six-year authorization bill.

Pat Dando, Vice Mayor, City of San Jose, states that this critical piece of legislation will reduce traffic, create new jobs, and stimulate the economy. It is essential to tell Congress that a six-year reauthorization bill funded at no less than \$318 billion is critical for America’s cities and towns. Any reauthorization bill must also not retreat from the policy fundamentals established in the

Transportation Equity Act for the 21st Century (TEA-21). See letter from San Jose Vice Mayor Dando in Agenda packet.

RECOMMENDATION: Adopt a Resolution in Support for Federal Transportation Reauthorization.

Economic Development Commission

7. SELECT CONSULTANT AND APPROVE CONTRACT FOR PREPARATION OF ECONOMIC DEVELOPMENT PLAN: ECONOMIC DEVELOPMENT COMMISSION (STAFF CONTACT: CINDY MAXWELL, 586-3282)

BACKGROUND: In November 2003, the City Council approved a request from the Economic Development Commission (EDC) to obtain outside professional assistance to prepare a comprehensive Economic Development Plan (Plan).

Six firms responded to the City's Request for Proposal. Staff and the Chair (Diane McDonough) and Vice Chairman (Dhaval Brahmhatt) of the EDC reviewed the proposals and served on the oral board interviewing the top consultants. On March 8, 2004, the EDC recommended the City Council select Applied Development Economics (ADE), Berkeley, for the project. The EDC also reviewed the draft scope of services and recommended approval.

The project consists of nine major tasks to be completed by the early 2005. ADE will enlist public participation through a business survey, interviews, focus groups and a public workshop. The consultant will work with the EDC on goal setting and visioning and will prepare an economic profile and analysis and benchmarking comparison with other cities. The City's economic strategies and objectives will be identified and an implementation plan will be developed.

The proposed contract is a not-to-exceed \$99,890 including a 10 percent contingency. Redevelopment funds are available for this project.

RECOMMENDATION:

1. Approve the selection of Applied Development Economics as the consultant to prepare the Economic Development Plan; and,
2. Authorize the City Manager to execute the proposed contract subject to City Attorney approval.

Library Advisory Commission

*** 8. APPROVE THE 2004 LIBRARY ADVISORY COMMISSION WORK PLAN (STAFF CONTACT: AARON BUENO AND MARILYN HAY, COMMISSION CHAIR, 586-3226)**

BACKGROUND: Pursuant to the Library Advisory Commission Bylaws, the Library Advisory Commission is an advisory body to the Milpitas City Council on matters concerning the Milpitas Library. These matters include the library's use, needs, and improvements. The commission will also assist the library in meeting the informational, educational, and recreational needs of its multicultural community. The Library Advisory Commission has developed an annual Work Plan to focus on projects and programs that benefit the community. The Work Plan is shown below:

Goal # 1 Serve as a link between the community and the library

Objectives:

- a) Place suggestion boxes throughout high use areas to identify the needs of the community. Based on the suggestions received, the Commission will make recommendations to the Community Librarian.
- b) Participate in City-sponsored events with informational displays when appropriate and authorized by the city. Commissioners may staff displays.
- c) Promote better appreciation of different cultures by addressing these particular needs for library services and participate at cultural events.
- d) Participate as requested in the development of the new state-of-the-art library and make recommendations to the Library Subcommittee.
- e) Effectively communicate the role of the Library Advisory Commission as a forum for citizen input at locations such as Milpitas High School, Senior Center, and Terrace Gardens. The Commissioners will staff these forums.
- f) Encourage and promote attendance at Library Advisory Commission meetings through press releases in the Milpitas Post and announcements on the community cable channel.

Goal # 2 Promote library programs, book sales, and services to the community

Objectives:

- a) Provide information to the Community Librarian for lobby posters and to the Community Center Supervisor for the electronic reader board messages.
- b) Provide information to the City's cable station with event announcements.
- c) Send press releases to local media.

Goal #3 Raise awareness of Community concerns about the library

Objectives:

- a) Provide community input to the library staff.
- b) Review suggestions received from citizen forums and present to Community Librarian.
- c) Address concerns to the Library Subcommittee.

Goal #4 Advocate legislation and funding that will help meet the needs of our community library

Objectives:

- a) Learn about legislation and lobby issues at the county, state, and national levels by attending appropriate conferences, like California Association of Library Trustees and Commissioners, and Legislative Day.
- b) Attend appropriate training and seminars with elected officials.

RECOMMENDATION: Approve the 2004 Library Advisory Commission Work Plan.

XV. UNFINISHED BUSINESS (NONE)

XVI. NEW BUSINESS

9. REVIEW AND APPROVE ETHICS STAKEHOLDER REPORT (STAFF CONTACT: TAMBRI HEYDEN, 586-3280)

BACKGROUND: At the March 16, 2004, Council meeting, the Council approved Amendment No. 1 to the Ethics Project Consulting Services Agreement. Among other things, the amendment moved preparation of the Task 1 – Stakeholder Report to Task 3 so that additional stakeholder interviews requested and approved by Council at the meeting could be conducted in parallel with the Task 2 - Ethics Awareness Survey. The survey, sent to a random sample of Milpitas

households, was deployed on March 10, 2004, with a scheduled completion of March 24, 2004. Since only 100 surveys had been completed by March 22, despite two mailed reminders, the Steering Committee decided to extend the date to March 28th and notified the selected households via a letter from Dr. Shanks, the ethics consultant. In addition, the Steering Committee, through a press release, arranged for publicity in the *Milpitas Post* to stress the importance of completing the survey. The extended date yielded 187 completed surveys.

One of the deliverables under Task 2 includes a simple aggregate statistics report and narrative based on the completed survey data. The results of the survey will be used in formulating the future ethics code implementation plan that will be prepared after the draft ethics code. Both the implementation plan and draft code are to be reviewed by Council at its May 18, 2004, meeting. The survey results regarding questions rating core values lay the ground work for the first code preparation workshop on March 31st, as core values are the key component of the ethics code. The survey report, which requires no Council action, will be distributed within the next two weeks. The last of four code preparation workshops occurs on May 5, 2004.

As of March 26, 2004, all but five of the additional stakeholder interviews were completed. Four of these remaining individuals could not be reached to schedule an interview or declined an interview. Therefore, it was assumed they were unable or not interested in participating in an interview and completion of the stakeholder report has moved forward. A copy of the report is included in the Council's agenda packet. The stakeholder report compiles and summarizes the interests, strengths, weaknesses, opportunities and threats facing the city's ethics code effort as identified by the 44 stakeholders interviewed.

RECOMMENDATION: Review and approve the ethics stakeholder report.

*** 10. APPROVE WATER SUPPLY ASSESSMENT FOR ELMWOOD RESIDENTIAL AND COMMERCIAL PROJECT (STAFF CONTACT: DARRYL WONG 586-3345)**

BACKGROUND: The Elmwood Residential and Commercial Project, proposed by KB Home South Bay Inc., and Santa Clara County, consists of over 700 residential units and auto sales facilities. The proposed project needs to comply with the requirements of state legislation mandating that a water supply assessment be included in any environmental documentation for projects exceeding 500 dwelling units demonstrating sufficient water supply.

Staff has completed a water supply assessment using the 2000 Urban Water Management Plan, the 2002 Water Master Plan, and 2003 Financial Utility Master Plan and determined that the City has sufficient water to supply to the proposed project. Copies of the Staff Water Supply Assessment Report, and the applicable legislation (SB 610 and SB 221) are included in the council packet.

RECOMMENDATION: Approve Water Supply Assessment for Elmwood Residential and Commercial Project.

*** 11. THEME SELECTION FOR THE 2005 CITY CALENDAR (STAFF CONTACT: SAMU TIUMALU, 586-3222)**

BACKGROUND: Historically, the Community Advisory Commission has chosen the theme for the annual City Calendar. This year, staff presented the CAC with four (4) theme suggestions for the 2005 City Calendar:

1. Milpitas' Youth...Our Future
2. Milpitas At It's Best
3. Play in Your Local Park
4. A Day in the Life of Milpitas

The Community Advisory Commission voted and chose option two (2) Milpitas At It's Best as the theme for the City Calendar for 2005. This theme would require the community's

participation by submitting photos of places, buildings, parks or anything else that the community feels represents Milpitas' best.

Staff will begin publicizing the calendar theme and request the community's input by submitting photos for the calendar through advertisements on Channel 15, the City's website and other local publications and media outlets.

RECOMMENDATION: Note, receipt and file.

12. APPROVE STAFFING CHANGES TO SUPPORT THE CAPITAL IMPROVEMENT PROGRAM AND A REORGANIZATION OF THE TRAFFIC SECTION IN ENGINEERING DIVISION (STAFF CONTACT: MIKE MCNEELY, 586-3301)

BACKGROUND: The Engineering Division has completed a comprehensive analysis of the future workload and professional staffing required to implement the City's projected five-year Capital Improvement Program.

In addition to regular annual capital projects that provide for general community enhancements for streets, parks, and utilities, there are more than 100 million dollars of special projects to be completed by July 2010 such as: Midtown-Main Street and Abel Street improvements, new Library, Midtown Parking, new Senior Center, and new Senior Affordable Housing.

To address these special capital improvements projects, the Engineering Division has organized a Special Projects Section and defined a schedule of staffing requirements to perform the work necessary to ensure the efficient and timely delivery of the special projects. The new Special Projects Section is planned to be staffed through the assignment of some existing personnel, the addition to the Division of some new positions, and the contracting of specialized consultant services. All of the funding for the staff and consultants for the Special Projects Section will be from restricted capital project monies, with no impact on the City's General Fund. The recommended additional positions are one Associate Civil Engineer and two Assistant Civil Engineers. In addition, filling of an existing vacant Accountant in Finance Department is proposed to support the Capital Improvement Program. This position will also be funded from Capital Improvement Projects to provide expenditure tracking, processing of appropriations, and budgetary support.

Upon the retirement of the Traffic Engineer, the functions of the Traffic Section in Engineering have also been reviewed. To maintain customer service, mandated activities, and project support, a new Principal Transportation Planner position is recommended to underfill the vacant Traffic Engineer. The new position will be funded approximately 90% General Fund – as was the Traffic Engineer position, which will remain vacant.

RECOMMENDATION: Approve three new engineering positions and the filling of the vacant Accountant position for the Capital Improvement Program and the new Principal Transportation Planner position.

XVII. ORDINANCES

13. INTRODUCE TRAFFIC ORDINANCE 43.200: AMENDMENT TO THE TRAFFIC CODE (STAFF CONTACT: MIKE MCNEELY, 586-3301)

BACKGROUND: Based on staff's engineering study, this ordinance amending the Traffic Code provides for traffic control to add North Park Victoria Drive from Kirkwall Place to the North City Limits to Milpitas' speed survey list enabling the use of radar for enforcement of a 25 mph speed.

RECOMMENDATION:

1. Waive reading beyond the title.

2. Introduce Ordinance 43.200 amending Chapter 100, Title V (Traffic) of the Milpitas Municipal Code.

XVIII. RESOLUTIONS

- * **14. RESOLUTION GRANTING INITIAL ACCEPTANCE: PLAYGROUND EQUIPMENT UPGRADE (PROJECT NO. 5077) (STAFF CONTACT: GREG ARMENDARIZ, 586-3220)**

BACKGROUND: The project to install new playground equipment at Dixon Landing Park, Foothill Park, Hall Park and Pinewood Parks was awarded to D. K Environmental on July 1, 2003. The City's contractor has completed the project. Therefore an initial acceptance may be granted and the contractor's faithful performance bond may be reduced to \$56,067.28, which is 10% of the contract amount.

RECOMMENDATION: Adopt resolution granting initial acceptance subject to a one-year warranty period and reduction of the faithful performance bond to \$56,067.28.

- * **15. RESOLUTION GRANTING INITIAL ACCEPTANCE: CATHODIC PROTECTION SYSTEM REPAIRS (PROJECT NO. 7050) (STAFF CONTACT: GREG ARMENDARIZ 586-3220)**

BACKGROUND: The project to install cathodic protection equipment onto various existing pipelines was awarded to Ranger Pipelines, Inc. on June 3, 2003. The City's contractor has completed the project. Therefore an initial acceptance may be granted and the contractor's faithful performance bond may be reduced to \$113,833.94, which is 10% of the contract amount.

RECOMMENDATION: Adopt resolution granting initial acceptance subject to a one-year warranty period and reduction of the faithful performance bond to \$113,833.94.

- * **16. RESOLUTION GRANTING FINAL ACCEPTANCE: NORTH MILPITAS BOULEVARD MEDIAN LANDSCAPE RENOVATIONS (PROJECT NO. 4140) (STAFF CONTACT: GREG ARMENDARIZ, 586-3220)**

BACKGROUND: This project was initially accepted on February 4, 2003, and has passed the one-year warranty period. A final inspection has been made and the public improvements consisting of renovations to the median landscaping on N. Milpitas Blvd. from Beresford Court to south of Jacklin Road are satisfactory. Therefore, a final acceptance may be granted and the contractor's bond may be released.

RECOMMENDATION: Adopt resolution granting final acceptance and release of the bond.

XIX. BIDS AND CONTRACTS

- * **17. AUTHORIZE THE CITY MANAGER TO ENGAGE MUNIFINANCIAL TO ASSIST WITH MAINTENANCE COST STRATEGIES AND COST SHARING SPREADS (STAFF CONTACT: BLAIR KING 586-3061)**

BACKGROUND: In accordance with the City's consultant selection process, staff has solicited proposals for professional assistance for two Midtown-related development issues. The issues specifically are: (1) the appropriate spread and share of costs between the Redevelopment Agency and other developers for maintenance and development of the North Main Street/Library parking structure and (2) strategies to address the increased costs of maintenance related to landscape improvements proposed for Midtown and other Milpitas locations. A partial list of new landscape maintenance obligations include: (1) approximately 3.7 miles of arterials along Main and Abel Streets, (2) new Midtown gateway features, (3) new Midtown parks and plazas, (4) landscaping maintenance obligations associated with the Tasman East/Capital light rail

extension, and (5) possible landscape maintenance responsibilities for the I880/SR237 interchange.

It is proposed to retain the services of MuniFinancial to assist in the development of strategies for maintenance costs. MuniFinancial is a public-sector financial consulting firm specializing in various forms of assessment districts. With regard to maintenance cost strategies, it is anticipated that the City, through MuniFinancial, will investigate the possibilities of using the flexibility of a Community Facilities District to provide for future maintenance costs.

Services provided by MuniFinancial would be provided on a time and materials basis with a not-to-exceed maximum amount of \$70,000. Funds have been budgeted and are available in account number 390-300-4237. Staff estimates that approximately two-thirds of the costs are recoverable.

RECOMMENDATION: Authorize the City Manager to engage the services of MuniFinancial to assist in the development of maintenance finance strategies and cost sharing spreads for the North Main Street/library parking structure, for an amount not to exceed \$70,000.

*** 18. APPROVE AGREEMENT AMENDMENT WITH SAN JOSE WATER CO. FOR PRINTING, PROCESSING, MAILING AND REMITTANCE PROCESSING OF UTILITY BILLS (STAFF CONTACT: EMMA KARLEN, 586-3125)**

BACKGROUND: San Jose Water Co. was awarded a service agreement on June 29, 1999 for designing, printing, mailing and remittance processing of the City's utility bills for the Finance Department. The Current agreement will expire at the end FY2003-04. Staff has negotiated with San Jose Water for a three-year extension of the agreement. The cost of the service will remain the same during the first year of the extended term. In the second and third year of the extended term, San Jose Water has requested fee increase for production and remittance processing in each year to increase with the Bay Area Consumer Price Index, with a not to exceed cap of 4%. Based on current cost for bill production of 150,000 bills annually, the cost for bill production is \$23,670 and the cost for remittance processing is \$15,500. Envelopes, bill paper printing, and mailing costs will continue to be a pass through cost. San Jose Water has consistently provided the City of Milpitas with outstanding customer service. Staff feels that the price increase in the second and third year of the extended term is reasonable.

RECOMMENDATION: Approve the amendment to the agreement with San Jose Water Co., subject to approval as to from by the City Attorney.

*** 19. AUTHORIZE THE CITY MANAGER TO EXECUTE AN AGREEMENT: TREADWELL & ROLLO, LIBRARY PRE-DESIGN (PROJECT NO. 3394) (STAFF CONTACT: STEVE ERICKSON, 586-3317)**

BACKGROUND: This project is included in the current five-year Capital Improvement Program (CIP). Consultant services are required to provide soil testing and environmental evaluation. In accordance with the City's consultant selection process, Treadwell & Rollo has been selected to provide professional environmental and geotechnical consultation services necessary for the project. Staff has negotiated a scope and fee with Treadwell & Rollo, based on time and materials for an amount not to exceed \$120,000. The fee is considered reasonable for the work involved, and there are sufficient funds in the project budget to cover this cost.

RECOMMENDATION: Authorize the City Manager to enter into the agreement with Treadwell & Rollo in the amount of \$120,000, subject to approval as to form by the City Attorney.

*** 20. AUTHORIZE THE CITY MANAGER TO EXECUTE AN AGREEMENT: LOWNEY ASSOCIATES, ABEL/CALAVERAS RIGHT TURN LANE (PROJECT NO. 4186) (STAFF CONTACT: STEVE ERICKSON, 586-3317)**

BACKGROUND: This project is included in the current five-year Capital Improvement Program (CIP). The completed project will provide a right turn lane from northbound Abel Street to eastbound Calaveras Blvd. to provide improved traffic capacity at the Abel/Calaveras intersection. Right of way acquisition is part of the project. Therefore, an environmental evaluation and possibly soil testing of the areas to be acquired is necessary to determine if any contaminated soils are present prior to the purchase of the property.

In accordance with the City's consultant selection process, Lowney Associates has been selected to provide professional environmental and geotechnical consultation services necessary for the project. Staff has negotiated a scope and fee with Lowney Associates, based on time and materials for an amount not to exceed \$25,000. The fee is considered reasonable for the work involved, and there are sufficient funds in the project budget to cover this cost.

RECOMMENDATION: Authorize the City Manager to enter into the agreement with Lowney Associates in the amount of \$25,000, subject to approval as to form by the City Attorney.

*** 21. AUTHORIZE THE CITY MANAGER TO EXECUTE AN AGREEMENT: LOWNEY ASSOCIATES, MAIN SEWAGE PUMP STATION SITE IMPROVEMENTS (PROJECT NO. 6079) (STAFF CONTACT: STEVE ERICKSON, 586-3317)**

BACKGROUND: This project is included in the current five-year Capital Improvement Program (CIP). The completed project will provide surface, site access, and drainage improvements at the main sewage pump station. The improved site will also be used for the relocated Corporation Yard that is required as part of the new Library Project. Improvements also include the removal of abandoned sewer treatment facilities, tanks, and the old operation building. The old treatment facilities may contain water and sludge materials of unknown quality. Therefore, prior to demolition and disposal, environmental testing of the site will be necessary to determine the nature of the materials for proper handling and disposal.

In accordance with the City's consultant selection process, Lowney Associates has been selected to provide professional environmental and geotechnical consultation services necessary for the project. Staff has negotiated a scope and fee with Lowney Associates, based on time and materials for an amount not to exceed \$115,000. The fee is considered reasonable for the work involved, and there are sufficient funds in the project budget to cover this cost.

RECOMMENDATION: Authorize the City Manager to enter into the agreement with Lowney Associates in the amount of \$115,000, subject to approval as to form by the City Attorney.

*** 22. AUTHORIZE THE CITY MANAGER TO EXECUTE AGREEMENT: OVERLAND, PACIFIC & CUTLER, MIDTOWN PARKING STRUCTURE RIGHT-OF-WAY AND CALAVERAS AND ABEL STREET RIGHT TURN (PROJECT NOS. 8154 & 4186) (STAFF CONTACTS: MIKE MCNEELY 586-3301 AND GREG ARMENDARIZ, 586-3220)**

BACKGROUND: The Midtown Parking Structure and Abel Street Right Turn Lane projects are included in the current five-year Capital Improvement Program (CIP). These projects will require property acquisitions and relocation of affected tenants and businesses. It is proposed that Overland Pacific & Cutler, Inc. provide professional consultation services to acquire the necessary land for these improvements and relocate tenants and owners.

Staff has negotiated a scope and fee with Overland Pacific & Cutler, Inc., for these two projects. This fee is based on time and materials for an amount not to exceed \$81,000 for Abel Street Right Turn Lane (Project #4186) and \$162,000 for the Midtown Parking Structure (Project #8154), totaling \$243,000. The fee is considered reasonable for the work involved. There are sufficient funds in project budget for the Abel Street Right Turn Lane (Project #4186). Staff recommends an appropriation to the Midtown Parking Structure (Project #8154) as follows:

Right of way services (OPC)	\$162,000
Staff Administration	<u>\$23,000</u>
Total:	\$185,000

Funds are available from the 2003 RDA bond proceeds. Additional funds for the Midtown Parking Structure land acquisition and relocations costs will be necessary once they are determined.

RECOMMENDATION:

1. Authorize the City Manager to execute an agreement with Overland Pacific & Cutler, Inc in the amount of \$243,000, subject to approval as to form by the City Attorney.
2. Approve the budget appropriation of \$185,000 for Midtown Parking Structure, Project No. 8154.

*** 23. AWARD BID FOR PRINTING THE MILPITAS ACTIVITY GUIDE (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: Staff sent bids to twelve large capacity printing vendors on Purchasing's bidders list for the setup, printing and preparation for residential mailing delivery of the Milpitas Activity Guide for the Recreation Services Division. The activity guide informs residents of classes, events, and activities that are offered at our recreation centers and throughout the City. The activity guide is printed three time per year and the bid was for a one year term with three single year extensions based on prior performance and incremental pricing at the City's discretion.

The following is the recap of the bids received including tax and delivery:

<u>Bidder</u>	<u>Activity Guide Bid</u>
Milpitas Post Newspapers, Inc.	\$16,414.38
Frike-Parks Press	\$16,486.11
Folger Graphics	\$18,518.79
Casey Printing, Inc	\$19,386.51
San Jose Mercury News	\$29,458.29
Teldon Print Media	\$31,245.81

There are sufficient funds in the Recreation Services Division budget for printing of the activity guide.

RECOMMENDATION: Award the bid for the first three issues of the 2004/05 Milpitas Activity Guide to Milpitas Post Newspapers, Inc. as the lowest bidder in the amount of \$16,414.38 and authorize the City Manager to execute a contract subject to approval as to form by the City Attorney; and authorize the City manager to exercise the options for the remaining three single year options if it is in the best interest of the City at that time to do so.

* **24. AWARD BID FOR TRAFFIC SIGNAL HEAD PAINTING (PROJECTS NOS. 4109 AND 4167) (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: Staff issued an Invitation for Bids (IFB) to paint 90 street light poles and 345 traffic signal heads. A bidders conference was conducted to familiarize the contractors with the work to be done and the possibility of splitting the award between street light poles and signal heads. Three contractors attended the conference and all contractors responded with proposals. After bids were received, an issue was raised as to the type of contractor's license that would be required to perform the work. A request for an opinion was sent to the Contractors State License Board and a qualified response was received indicating one contractor, Republic Electric, does not hold an appropriate license for painting light poles or signal heads. The following is a recap of the three bids received:

<u>Contactor</u>	<u>Street Light Pole Painting</u>	<u>Traffic Signal Head Painting</u>
Diaz Corporation	\$24,800.00	\$103,550.00
Republic Electric	\$49,772.00	\$98,685.00
Satellite Painting	\$21,600.00	No Bid

In the current year CIP budget there are only sufficient funds available from the Street Light Pole painting (Project No. 4109) and Traffic Signal Modifications (Project No. 4167) project to paint the traffic signal heads. Staff is recommending to only paint the traffic signal heads this year.

RECOMMENDATION: Authorize the City Manager to execute a contract with Diaz Corporation as the only qualified contractor for painting traffic signal heads in an amount not to exceed \$103,550.00, subject to approval as to form by the City Attorney.

* **25. AWARD BID FOR AUDIBLE PEDESTRIAN SIGNALS (PROJECT NO. 4173) (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: Staff issued a Request for Quotation for 50 audible pedestrian signals and 80 ADA pedestrian signal push buttons to six traffic signal equipment suppliers on Purchasing's bidders list, three responded. These audible signals will be installed at intersections along Great Mall Parkway near the light rail stations. City's Maintenance staff will be installing the audible signals and push buttons. The following is the recap of bids received including tax and freight:

<u>Bidder</u>	<u>Amount</u>
Fortel Traffic, Inc.	\$16,140.08
Synchronex, Inc.	\$17,536.50
JAM Services, Inc.	\$18,337.84

There are sufficient funds available in the Audible Pedestrian Signal Installation project (Project No. 4173) funds to purchase the audible signals and push buttons.

RECOMMENDATION: Award the bid for the purchase of the audible pedestrian signals and ADA push buttons to the lowest bidder, Fortel Traffic, Inc. in the amount of \$16,140.08.

XX. CLAIMS AND DEMANDS

* **26. APPROVE PAYMENT REQUESTS: MISCELLANEOUS VENDORS/CONTRACTORS (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$50,000.00 to Balch Petroleum to test, modify and repair seven underground fuel tanks to stay in compliance with State mandated SB989, secondary containment testing. Balch

Petroleum is a sole source provider of this service in the area. This is a not to exceed amount as modifications and repair costs will not be known until after testing of each underground tank is complete. (Funds are available from the Public Works Department operating budget for this service.)

2. \$7,020.01 to San Jose Blue for color printing and binding of 20 sets of large page utility plats for the Engineering Division. (Funds are available from various Water, Sewer and Recycled Water CIP projects for this purchase.)
3. \$18,398.00 to Peninsula Pump for emergency repairs to the pump column and bowl assembly at the Abbott Pump Station and emergency pump bearing repair at the Oakcreek Pump Station. (Funds are available from the Public Works Department operating budget for this emergency repair service.)
4. \$11,200.00 to Robert A Bothman, Inc. for emergency concrete repairs due to water line breaks at 25 locations. (Funds are available from the Public Works Department operating budget for these emergency repair services.)
5. \$6,327.84 to Preston Pipeline for emergency repairs to a 12", high pressure, water main on Calaveras Blvd. at Calaveras Ct. (Funds are available from the Public Works Department operating budget for this emergency repair service.)
6. \$6,141.00 to Intelligent Technologies and Service to provide annual inspections and preventive maintenance of fire sprinkler systems for the Police/Public Works building, Community Center and the Sports Center. (Funds are available from the Public Works Department operating budget for this service.)
7. \$11,025.00 to MWH Laboratories for quarterly State mandated water quality testing and analysis for HAAS and THM in the City's drinking water supply for the Utility Maintenance Division. (Funds are available from the Public Works Department operating budget for this required service.)
8. \$5,148.00 to CJ's Police K9s for the purchase of a new police dog to fill one vacancy in the K-9 unit for the Police Department. (Funds are available from the Police Department operating budget for this purchase.)
9. \$6,386.75 to US Metering and Technology for the purchase of 120 residential water meters to replenish depleted inventory supplies for the Utility Maintenance Division. (Funds are available from the Public Works Department operating budget for this purchase.)
10. \$12,502.04 to Edward S. Walsh Co. for the purchase of 15 fire hydrants and miscellaneous hydrant repair parts to replenish depleted inventory supplies for the Utility Maintenance Division. (Funds are available from the Public Works Department capital outlay and operating budget for this purchase.)

RECOMMENDATION: Approve the purchase requests.

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, APRIL 20, 2004, AT 7:00 P.M.**

City Council

Jose Esteves, Mayor

Patricia Dixon, Vice Mayor

Bob Livengood, Councilmember

Althea Polanski, Councilmember

Armando Gomez Jr., Councilmember

MILPITAS CITY COUNCIL

NOTICE OF SPECIAL MEETING

March 22, 2004

5:30 p.m.

Council Chambers, City Hall
455 E. Calaveras Blvd

NOTICE IS HEREBY GIVEN that, pursuant to Government Code section 54956, the Mayor has called a Special Meeting of the Milpitas City Council to be held at 5:30 p.m. on Monday, the 22nd day of March, 2004, in the Council Chambers, 455 E. Calaveras Blvd, Milpitas, California. The meeting will be called to order in the Council Chambers and the Council will adjourn to the Council Executive Conference Room at City Hall for the purpose of holding a Closed Session:

1. CITIZENS FORUM

Members of the audience are invited to address the City Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the City Council and no action can be taken; however, the City Council may instruct the City Manager to agendize the item for a future meeting.

2. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9:
One case

Gail Blalock, City Clerk
408/586-3001

Date: March 18, 2004

City Council

Jose Esteves, Mayor

Patricia Dixon, Vice Mayor

Armando Gomez, Jr. Councilmember

Bob Livengood, Councilmember

Althea Polanski, Councilmember

CITY OF MILPITAS**MILPITAS CITY COUNCIL MEETING**

MARCH 16, 2004

6:00 p.m.

Council Chambers

455 E. Calaveras Boulevard

SUPPLEMENTAL AGENDA

CLOSED SESSION**6. CONFERENCE WITH REAL PROPERTY NEGOTIATOR**

(Pursuant to Government Code Section 54956.8)

Property: APN Nos. 86-12-015, 86-12-016, and 86-12-020

Negotiating Parties: Milpitas Redevelopment Agency/City and Abel Trust

Agency Negotiator: Thomas J. Wilson

Under Negotiation: Terms and Conditions for Acquisition of Property

Printed and Posted March 12, 2004

Gail Blalock, City Clerk

**CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
March 16, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard**

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

(Pursuant to Government Code Section 54956.9[a])

Title: Milpitas v. Turner Construction et al.

Santa Clara County Superior Court Case No. CV008400

2. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

(Pursuant to Government Code Section 54956.9[a])

Title: Milpitas v. Pacific Gas and Electric

Santa Clara County Superior Court Case No. CV790089

3. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

(Pursuant to Government Code Section 54956.9[a])

Title: Milpitas v. McCarthy, et al.

Santa Clara County Superior Court Case No. CV790091

4. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

(Pursuant to Government Code Section 54956.9[a])

Title: Milpitas v. Santa Clara Valley Water District

Santa Clara County Superior Court Case No. CV790093

5. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: APN #022-08-042

Negotiating Parties: City of Milpitas and County of Santa Clara

Agency Negotiator: Thomas J. Wilson

Under Negotiation: Terms and Conditions for Disposition or Lease

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES: March 2, 2004

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

Commendations:

• SAFE Graduate Recognition, Class 9

Lynette Antorov

Mary Fairchild

Robert Kearin

Todd Bradford

Oscar "Skip" Hicks

Syed Mohsin

Jack Callison

Carla Kearin

Josephine Nguyen

Antonella Como

- Senior Volunteer Program Recognition

Jean Andona	Rita Hofmann	Richard Sigsby
Ted Armstrong	Geneva Jackson	Betty Lee Stein
May Chan	Lillian Kupiec	Ed Wagner
Butch Dennis	Pat Nathan	Patti Wang
Ken Doll	Bob Roberts	Betty Won
Margaret Fisher	Claire Schroeder	Ron Won
Mary Jane Hill	Nancy Sigsby	Jane Wong
- Milpitas Toastmasters #7242, 15th Anniversary
- Francis R. G. Briones, Eagle Scout

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. APPROVAL OF AGENDA

XI. CONSENT CALENDAR (Items with Asterisks)

XII. PUBLIC HEARING

1. **Adopt Negative Declaration (EA2004-1) and Introduce Ordinance No. 38.763 (ZT2004-1) Amending Title XI, Chapter 10 (Planning, Zoning and Annexation) of the Municipal Code; Continue to April 6, 2004 (Staff Contact: Staci Pereira, 586-3278)**

XIII. JOINT REDEVELOPMENT AND AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: March 2, 2004

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

RA5. Note Receipt And File Progress Report on Library Project: Library Project No. 3394 (Staff Contact: Greg Armendariz, 586-3220)

RA6. Approve New CIP Project & Budget Appropriation for Abel Street Midtown Improvements; Authorize the City Manager to Execute a Consultant Services Agreement with JMH Weiss, Inc. (New CIP Project) (Staff Contact: Blair King, 586-3060, Greg Armendariz, 586-3220 and James Lindsay, 586-3274)

***RA7. Authorization of Appraisal Services Relative to the Evaluation City-Owned Property Identified as APN 022-08-042 (Staff Contact: Blair King)**

RA8. AGENCY ADJOURNMENT

JOINT MILPITAS FINANCING AUTHORITY, REDEVELOPMENT AGENCY, AND CITY COUNCIL MEETING

FA1. CALL TO ORDER BY THE MAYOR

FA2. ROLL CALL

FA3. APPROVAL OF AGENDA

FA4. Adopt Various Resolutions to Defease the Public Financing Authority's Great Mall of the Bay Area Sales Tax Revenue Bonds, Series 2000, and approve related Escrow Deposit and Trust Agreement (Staff Contact: Thomas Wilson 586-3050, Blair King 586-3060, Emma Karlen 586-3145)

FA5. FINANCING AUTHORITY AND REDEVELOPMENT AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

- * 2. Approve the Mayor's Appointments to the Arts Commission: Mayor Esteves
- 3. Consider Adopting a Policy to Guide the City Attorney in the Development of Protocol for Public Access to Meetings and for Disclosure of Public Records: Councilmember Gomez (942-1110 or 586-3031)

Economic Development Commission

- * 4. Authorize Mayor To Send Support Letters For Workers' Compensation Reform Legislation: Economic Development Commission (Staff Contact: Cindy Maxwell, 586-3282)

XV. UNFINISHED BUSINESS

- 5. Receive Odor Control Comprehensive Action Plan Update and Approve Consultant Agreement with Cal Recovery, Inc. (Staff Contact: Darryl Wong, 586-3345)

XVI. NEW BUSINESS

- 6. Review and Approve Plan For Ethics Code Development and Amendment No. 1 to the Ethics Project Scope of Work and Cost for Additional Interviews (Staff Contact: Tambri Heyden, 586-3280)
- * 7. Approve Request From Knights of Columbus for Waiver of Community Center Rental Fees for the 2004 Citizen of the Year Event (Staff Contact: Bonnie Greiner, 586-3227)

XVII. ORDINANCES (NONE)

XVIII. RESOLUTIONS

- * 8. Resolution Granting Initial Acceptance: Manor Pump Station Improvements (Project Nos. 3385 & 3396) (Staff Contact: Mehdi Khaila 586-3328)
- * 9. Resolution Granting Initial Acceptance: Interim Senior Center Modular Addition (Project No. 8151) (Staff Contact: M. Rogge 586-3257)
- * 10. Resolution Granting Initial Acceptance: Interim Senior Center Site Improvements (Project No. 8151) (Staff Contact: M. Rogge 586-3257)

XIX. BIDS AND CONTRACTS

- * 11. Approve Plans and Specifications: Singley Area Street Rehabilitation, Phase III, Project No. 4200; Marylinn Drive Sidewalk Project No. 4222 and Sports Center Master Plan Improvements, Phase I, Project No. 8149; Consultant: Design Engineers Group; (Staff Contact: Doug De Vries (408) 586-3313)
- * 12. Approve Plans and Specifications: Hall Park Walkway (Project No. 5058) (Staff Contact: Steve Erickson 586-3317)
- * 13. Approve and Authorize Recreation Services to Enter into a Contract with Major League Soccer for Summer 2004 Soccer Camp Programs Not to Exceed \$10,000.00, Subject to Approval as to Form by the City of Attorney (Staff Contact: Dale Flunoy, 586-3228)
- * 14. Approve and authorize Recreation Services to enter into a contract with Skyhawks Sports Programs for Summer Camp Programs for Summer 2004 Sports Camps not to exceed \$20,000.00, subject to approval as to form by the City of Attorney. (Staff Contact: Dale Flunoy, 586-3228)
- * 15. Agreement Amendment: O'Brien Kreitzberg, Project Management Services, Montague Expressway Widening Projects, (Project Nos. 4178, 4179, 4180, 4133, 4186, 5069, 7086, 7098) (Staff Contact: Doug De Vries, 586-3313)
- * 16. Approve Agreement: Harris Design, Athletic Court Resurfacing (Project No. 5069) (Staff Contact: Doug Devries, 586-3313)
- * 17. Approve Agreement with Dan Cloak Environmental Consulting to Provide Urban Runoff Permit Program Services (Staff Contact: Darryl Wong 586-3345)
- * 18. Authorize Purchase of Network Storage Equipment. (Staff Contact: Bill Marion, 586-2701)

XX. CLAIMS AND DEMANDS

- * 19. Approve Payment Requests: Miscellaneous Vendors /Contractors (Staff Contact: Lou Zenzen, 586-3161)

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, APRIL 6, 2004, AT 7:00 P.M.**

**CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
March 16, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard**

XII. PUBLIC HEARING

- 1. ADOPT NEGATIVE DECLARATION (EA2004-1) AND INTRODUCE ORDINANCE NO. 38.763 (ZT2004-1) AMENDING TITLE XI, CHAPTER 10 (PLANNING, ZONING AND ANNEXATION) OF THE MUNICIPAL CODE; CONTINUE TO APRIL 6, 2004: (STAFF CONTACT: STACI PEREIRA, 586-3278)**

BACKGROUND: The Planning Commission held a public hearing for the proposed Ordinance No. 38.763 and related Draft Negative Declaration on February 25, 2004. The item was continued to allow staff additional time to prepare research for the zoning code text amendments that relate to single family dwellings and to allow review by the Community Advisory Commission. Staff will incorporate the necessary modifications to the amendments requested by the CAC and return to the Planning Commission on March 24, 2004. Any subsequent modifications will be prepared in time for the City Council's review at its meeting on April 6, 2004.

RECOMMENDATION: Open the public hearing and continue the item to April 6, 2004.

XIII. JOINT REDEVELOPMENT AND AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: March 2, 2004

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

RA5. NOTE RECEIPT AND FILE PROGRESS REPORT ON LIBRARY PROJECT: LIBRARY PROJECT NO. 3394 (STAFF CONTACT: GREG ARMENDARIZ, 586-3220)

BACKGROUND: Staff has been working on a draft request for proposals for the architectural design of the library project based on the Council approved Library Needs Assessment Study and Library Building Program. Included in the Council agenda packets are a staff report on the progress of RFP and other elements of the project, which are currently underway.

RECOMMENDATION: Note receipt and file progress report on the library project.

RA6. APPROVE NEW CIP PROJECT & BUDGET APPROPRIATION FOR ABEL STREET MIDTOWN IMPROVEMENTS; AUTHORIZE THE CITY MANAGER TO EXECUTE A CONSULTANT SERVICES AGREEMENT WITH JMH WEISS, INC. (NEW CIP PROJECT) (STAFF CONTACT: BLAIR KING, 586-3060, GREG ARMENDARIZ, 586-3220 AND JAMES LINDSAY, 586-3274)

BACKGROUND: The City recently entered into three-party agreements with the County of Santa Clara and KB Homes for the development of the County owned parcels surrounding the Elmwood facility and adjoining Abel Street. The new development will include the construction of new roadways, approximately 823 new residential units, and a new City park. KB Homes will be required to design and construct roadway and streetscape improvements on both sides of Abel

Street between Corning Avenue and Great Mall Parkway. These Abel Street improvements would be consistent with the Midtown Specific Plan streetscape standards.

In addition, it is proposed that Abel Street be improved beyond the boundaries of KB Home's responsibility, from Corning Street to Weller Lane, consistent with the Midtown Specific Plan. A new Capital Improvement Project (CIP) is therefore recommended for Abel Street Midtown improvements.

In order to ensure the coordinated completion of these improvements with the KB development, a Public Improvement Design Cost Agreement has been drafted between the City and KB Homes. The City would engage the design services of an engineering consultant firm to design the proposed improvements on Abel Street. Staff has interviewed several professional consultants in accordance with the City's consultant selection process and recommends that JMH Weiss, Inc. provide these design services. This consultant has recent successful experience in providing this type of design services on a much larger and more complicated development in San Mateo (Bay Meadows).

JMH Weiss, Inc. would provide professional engineering and design services required to construct these improvements. Specific tasks include detailed land surveying, preparation of base maps, design engineering, prepare plans and specifications, bidding assistance, and construction engineering support. These services will be provided on a time and materials basis with a not-to-exceed maximum amount of \$600,000, which is considered reasonable for the level of service involved. An additional \$50,000 is recommended for staff administration, coordination and management of this project.

KB Homes has agreed to pay \$275,000 for their share of the design and preparation of construction plans and specifications. The City's share of the design costs is \$375,000, and funds are available from the 2003 Bond Proceeds.

RECOMMENDATION:

1. Approve a new CIP project for Abel Street Midtown Improvements and a budget appropriation of \$275,000 from developer contributions, and \$375,000 from the 2003 RDA Bond Proceeds (total \$650,000);
2. Authorize the City Manager to execute an agreement for services with Weiss JMH Weiss, Inc., in the amount not to exceed amount of \$600,000 subject to approval as to form by the City Attorney.

***RA7. AUTHORIZATION OF APPRAISAL SERVICES RELATIVE TO THE EVALUATION CITY-OWNED PROPERTY IDENTIFIED AS APN 022-08-042 (STAFF CONTACT: BLAIR KING)**

BACKGROUND: The City/Agency is currently engaged in conceptual discussions with the County of Santa Clara regarding the joint development of an undeveloped approximately 1.1 acre parcel owned by the City identified as APN 022-08-042, located in the vicinity of North Main Street. In the course of mutual due diligence, the parties have identified the need to determine the site's value. Staff desires to obtain the services of a qualified appraiser and share these costs equally with the County. Due to time constraints, the appraisal firm as not yet been identified.

RECOMMENDATION:. Authorize the City Manager to obtain appraisal services relative to an evaluation of APN 022-08-042 for a not to exceed amount of \$15,000.

RA8. AGENCY ADJOURNMENT

JOINT MILPITAS FINANCING AUTHORITY, REDEVELOPMENT AGENCY, AND CITY COUNCIL MEETING

FA1. CALL TO ORDER BY THE MAYOR

FA2. ROLL CALL

FA3. APPROVAL OF AGENDA

FA4. ADOPT VARIOUS RESOLUTIONS TO DEFEASE THE PUBLIC FINANCING AUTHORITY'S GREAT MALL OF THE BAY AREA SALES TAX REVENUE BONDS, SERIES 2000, AND APPROVE RELATED ESCROW DEPOSIT AND TRUST AGREEMENT (STAFF CONTACT: THOMAS WILSON 586-3050, BLAIR KING 586-3060, EMMA KARLEN 586-3145)

BACKGROUND: In 1993, the Redevelopment Agency entered into an Owner Participation Agreement (OPA) with Ford Motor Land Development Corporation to provide for certain public improvements to effectuate the purposes of the Great Mall Redevelopment Project Area. This agreement led to the development of the Great Mall of the Bay Area, a significant local landmark and resource. Although the Great Mall provides a substantial amount of General Fund revenue, the total sales tax revenue that could be produced is constrained due to the obligation to retire the 2000 Great Mall Bonds. In order to redirect sales tax revenue into the City's General Fund, it is proposed to defease (prepay) the 2000 Great Mall Bonds by substituting restricted use Redevelopment Funds from Project Area 1 for unrestricted sales tax revenue. This proposed action will immediately produce an additional approximate \$1.1 million in annual sales tax revenue for the City's General Fund.

In May of 2000, in order to finance the public facilities required to be provided under the 1993 OPA, the Public Finance Authority issued bonds in the par amount of \$9,205,000. The bonds incorporated the terms of the OPA that pledged one-half of the sales tax revenue generated by the Great Mall to retire the debt. This amount equals approximately \$1.1 million annually. If not for the 1993 OPA and the Great Mall Bonds, this revenue would flow to the General Fund. In addition to the pledge of sales tax, to provide additional security, the City pledged Fire Stations three and four as collateral for the bonds.

The adoption of the Eighth Amendment to the Redevelopment Plan provides the opportunity to restructure the 2000 Great Mall Bonds and insert a substitute revenue other than sales tax. The attached opinion from the City Attorney indicates that if the Agency desires, it is reasonable to find that the improvements financed by the Great Mall Bond benefit Redevelopment Project Area 1 and could be paid from restricted use tax increment funds.

Attached is a map that shows the location of the improvements financed by the Great Mall Bonds. One will note that the majority of public improvements are actually located within the boundaries of Project Area 1, prima facie evidence of a benefit to Project Area 1. Additionally, attached is a memorandum from Principal Transportation Planner Joe Oliva explaining the benefits of the circulation improvements financed by the Great Mall Bonds upon Project Area 1.

Bond Counsel David Oster of Jones Hall has provided an opinion that the Great Mall Bonds may be prepaid. To legally defease the Great Mall Sales Tax Bonds, an escrow account must be established to continue servicing the debt payments until final maturity. The proposed form of the escrow agreement is attached. The amount of tax increment required to be placed with the escrow agent will not exceed \$7 million. There are sufficient undesignated Redevelopment Agency reserves to provide for this payment. These funds combined with the sales tax revenue already deposited with the trustee of the bonds will be transferred to the escrow account, and any interest earnings generated from the investment of these funds will be sufficient to pay the outstanding principal and interest on the bonds until June 2015.

The defeasance of the Great Mall Bonds will provide approximately \$1.1 million annually of unrestricted General Fund revenue, funds that would not be available for 11 years. Additionally, the defeasance of the bonds will release the Fire Stations that serve as collateral for the bonds. The cost to the Agency for professional fees to execute this transaction are budgeted not to exceed \$55,000, and will be paid directly by the Agency, not from Bond proceeds.

RECOMMENDATION:

1. Adopt a resolution of the Redevelopment Agency authorizing an expenditure of Tax Increment Revenue in an amount not to exceed \$7 million to defease the Great Mall of the Bay Area Sales Tax Revenue Bonds, Series 2000.
2. Adopt a resolution of the Milpitas Public Financing Authority authorizing the defeasance of the Authority's Great Mall of the Bay Area Sales Tax Revenue Bonds, Series 2000, and approving related agreements and actions.

FA5. FINANCING AUTHORITY AND REDEVELOPMENT AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

*** 2. APPROVE THE MAYOR'S APPOINTMENTS TO THE ARTS COMMISSION: MAYOR ESTEVES**

BACKGROUND: For the Arts Commission, Mayor Esteves is recommending moving Donine Ettinger from the Alternate 1 position to a regular position created by Barbara Barrie's resignation, moving Harriet McGuire from the Alternate 2 position to Alternate 1, and appointing Angela Gupta to the Alternate 2 position. A copy of Ms. Gupta's application is included in the Council's agenda packets.

RECOMMENDATION: Approve the Mayor's appointment of Donine Ettinger to fill the vacancy created by Barbara Barrie for a term expiring October 2006; moving Harriet McGuire from Alternate 2 to Alternate 1 for a term expiring October 2005; and appointing Angela Gupta to the Alternate 2 position for a term expiring October 2004.

3. CONSIDER ADOPTING A POLICY TO GUIDE THE CITY ATTORNEY IN THE DEVELOPMENT OF PROTOCOL FOR PUBLIC ACCESS TO MEETINGS AND FOR DISCLOSURE OF PUBLIC RECORDS: COUNCILMEMBER GOMEZ (942-1110 OR 586-3031)

BACKGROUND: Councilmember Gomez is asking the Council to consider adopting a Statement of Policy and General Rules to guide the City Attorney in the development of protocol for public access to meetings and for disclosure of public records. Included in the Council's agenda packets is a memo from Councilmember Gomez.

RECOMMENDATION: Discuss and direct staff accordingly.

Economic Development Commission

*** 4. AUTHORIZE MAYOR TO SEND SUPPORT LETTERS FOR WORKERS' COMPENSATION REFORM LEGISLATION: ECONOMIC DEVELOPMENT COMMISSION (STAFF CONTACT: CINDY MAXWELL, 586-3282)**

BACKGROUND: On March 8, 2004, the Economic Development Commission (EDC) considered Governor Schwarzenegger's workers' compensation reforms contained in SBX4 3 (Poochigian; R-Fresno) and ABX4 1 (Maldonado; R-Santa Maria). The EDC recommended the City Council support the reforms since they would provide improvements to the workers' compensation system and the overall business environment in the state of California. The proposed legislation would decrease workers' compensation costs and increase benefits for the most severely injured employees.

RECOMMENDATION: Authorize the Mayor to send the proposed draft letters in support of SBX4 3 and ABX4 1.

XV. UNFINISHED BUSINESS

5. RECEIVE ODOR CONTROL COMPREHENSIVE ACTION PLAN UPDATE AND APPROVE CONSULTANT AGREEMENT WITH CAL RECOVERY, INC. (STAFF CONTACT: DARRYL WONG, 586-3345)

BACKGROUND: This is an update of the odor control coordination activities. Some of the key events that have occurred during the past month include:

1. Staff visited the San Jose/Santa Clara Water Pollution Control Plant to review odor control best management practices.
2. Based upon odor management qualifications and experience, Cal Recovery was selected to provide professional consulting services. Staff negotiated a professional odor control advisory services agreement. Staff recommends approval of the agreement for \$10,000.00. There are sufficient funds in the Engineering operating budget.
3. Staff distributed doorhangers in neighborhoods in the north westerly area of the city advising citizens to contact the Bay Area Air Quality Management District (BAAQMD) during odor events.
4. BAAQMD began implementing the final stage of the rapid notification program to provide real time advisories of odor events to City staff, Local Enforcement Agency (LEA), and the possible odor generators.
5. Staff and City Attorney have continued to analyze potential legislative changes to make regulation of odor emanating from composting facilities more effective.
6. Staff reviewed and incorporated comments from the stakeholders to the Odor Control Comprehensive Action Plan.

The Bay Area Air Quality Management District (BAAQMD) has reported the following number of complaints logged in October: 96, November: 50, December: 16, January: 31, February: 11.

RECOMMENDATION: Note receipt and file progress report and authorize the City Manager to execute the agreement amendment with Cal Recovery Inc., in the amount of \$10,000.00, subject to approval as to form by the City Attorney.

XVI. NEW BUSINESS

6. REVIEW AND APPROVE PLAN FOR ETHICS CODE DEVELOPMENT AND AMENDMENT NO. 1 TO THE ETHICS PROJECT SCOPE OF WORK AND COST FOR ADDITIONAL INTERVIEWS (STAFF CONTACT: TAMBRI HEYDEN, 586-3280)

BACKGROUND: Task 1 – Background Review of the city's ethic project involves three deliverables: a stakeholder report, a recommended plan for development of the ethics code and a draft awareness survey (citizen survey). The survey was approved at the March 2, 2004 Council meeting and was deployed on March 10, 2004 for completion on March 24, 2004.

As noted at the March 2nd Council meeting, additional requests for interviews will be honored and will be arranged during the latter part of March to minimize conflict and delay in the contract tasks and schedule. A total of 23 additional interviews has been requested by individual Council members. A list of those who have been interviewed and the requested additional interviewees is included in the Council's packet. Completion of the stakeholders report will be postponed until the additional interviews are completed. Council review of the report is anticipated for the April 6, 2004, Council meeting.

The ethics contract and scope of work included 10 one-on-one interviews. A total of 24 interviews have been conducted. Therefore, a proposed amendment to the scope of work and project cost to include these additional interviews is included in the Council's packet. This

amendment proposes to increase the project cost by \$1,500. As a result, the total project cost will be an amount not to exceed \$23,460.

To keep the ethics project on schedule as much as possible, the consultant has moved forward with preparing a plan, included in the Council's agenda packets, on how to proceed with development of an ethics code. This plan includes recommendations for ways to integrate the interests of all key stakeholders into the code preparation effort. Specifically, it recommends that the CAC continue to lead as the forum for receiving community input. It is further recommended that special CAC meetings for the purpose of code development be scheduled and that attendance by representatives of the various groups to whom the ethics code will apply – campaign candidates, elected and appointed officials and management staff, be organized and secured. The CAC has set the dates of March 31, 2004, April 7, 2004, April 22, 2004, and May 5, 2004, for the public code preparation sessions.

RECOMMENDATION: Review and approve the plan for developing the ethics code and Amendment No. 1 to the ethics project scope of work for additional interviews at a cost not to exceed \$1,500.

* **7. APPROVE REQUEST FROM KNIGHTS OF COLUMBUS FOR WAIVER OF COMMUNITY CENTER RENTAL FEES FOR THE 2004 CITIZEN OF THE YEAR EVENT (STAFF CONTACT: BONNIE GREINER, 586-3227)**

BACKGROUND: The Knights of Columbus, Milpitas Council No. 5796, has submitted a letter requesting the rental and insurance fees totaling \$504.80 for use of the Community Center for the 2004 Citizen of the Year event be waived. The event is scheduled for Saturday, March 20, 2004, from 6:00 p.m. to midnight at the Community Center Auditorium. The Council has in the past waived the rental fees, however; the insurance fees of \$181.80 must be paid directly to the insurance carrier. A copy of the letter from the Knights of Columbus is included in the Council's agenda packets.

RECOMMENDATION: Approve the request from the Knights of Columbus to waive the rental fees totaling \$323.00 for use of the Community Center Auditorium on March 20, 2004.

XVII. ORDINANCES (NONE)

XVIII. RESOLUTIONS

* **8. RESOLUTION GRANTING INITIAL ACCEPTANCE: MANOR PUMP STATION IMPROVEMENTS (PROJECT NOS. 3385 & 3396) (STAFF CONTACT: MEHDI KHAILA 586-3328)**

BACKGROUND: The project to upgrade the Manor Pump Station, was awarded to D. W. Nicholson Corporation on April 15, 2003. The City's contractor has completed the project. Therefore an initial acceptance may be granted and the contractor's faithful performance bond may be reduced to \$26,064.20, which is 10% of the contract amount.

RECOMMENDATION: Adopt resolution granting initial acceptance subject to the one-year warranty period and reduction of the faithful performance bond to \$ 26,064.20.

- * 9. **RESOLUTION GRANTING INITIAL ACCEPTANCE: INTERIM SENIOR CENTER MODULAR ADDITION (PROJECT NO. 8151) (STAFF CONTACT: M. ROGGE 586-3257)**

BACKGROUND: This construction contract, to provide modular buildings, decking, stairs, ramps, awning, and related work at the Interim Senior Center. The contract was awarded to Brandall Modular Corporation on August 5, 2003.

The contractor has completed the project. Therefore, an initial acceptance may be granted and the contractor's faithful performance bond may be reduced to \$31,900.00, which is 10% of the contract amount.

RECOMMENDATION: Adopt resolution granting initial acceptance subject to the one-year warranty period and reducing the faithful performance bond to \$31,900.00.

- * 10. **RESOLUTION GRANTING INITIAL ACCEPTANCE: INTERIM SENIOR CENTER SITE IMPROVEMENTS (PROJECT NO. 8151) (STAFF CONTACT: M. ROGGE 586-3257)**

BACKGROUND: This construction contract provided a building pad with underground utilities, walkways and landscaping for the modular buildings at the Interim Senior Center. The construction contract was awarded to Joseph D. Albanese, Inc. on September 3, 2003.

The contractor has completed the project. Therefore, an initial acceptance may be granted and the contractor's faithful performance bond may be reduced to \$7,558.00, which is 10% of the contract amount.

RECOMMENDATION: Adopt resolution granting initial acceptance subject to the one-year warranty period and reducing of the faithful performance bond to \$7,558.00.

XIX. BIDS AND CONTRACTS

- * 11. **APPROVE PLANS AND SPECIFICATIONS: SINGLEY AREA STREET REHABILITATION, PHASE III, PROJECT NO. 4200; MARYLINN DRIVE SIDEWALK PROJECT NO. 4222 AND SPORTS CENTER MASTER PLAN IMPROVEMENTS, PHASE I, PROJECT NO. 8149; CONSULTANT: DESIGN ENGINEERS GROUP; (STAFF CONTACT: DOUG DE VRIES (408) 586-3313)**

BACKGROUND: Plans and specifications for the subject project have been completed in accordance with the approved Capital Improvement Program (CIP). The project will provide drainage improvements at various locations in the Singley Drive neighborhood. More specifically, the project involves reconstruction of sections of pavement, sidewalks, curb and gutter in areas along Donahue Drive, Hamilton Drive, Dundee Avenue, Parvin/Via Baja, and Sark, Perth, De Anza, Alisal and Del Vaile, Fulton Courts.

Other improvements include reconstruction of the alleyway between Milpitas Sports Center and North Park Victoria Drive, to provide a second exit for vehicles from the Sports Center during major events. Lastly, it also includes the construction of a missing section of sidewalk providing two continuous sidewalks along Marilyn Dr. west of Railroad Ave. A TDA grant was obtained for the sidewalk work.

The engineer's estimate for the work is approximately \$1,200,000. An additional appropriation may be needed for the construction of this project. The additional amount if any will be known at the end of the bidding process, at which time a request will be made to the Council for additional funding. A copy of the project plan title sheet is included in the Council's agenda packets. Complete plans and specifications are available for review in the office of the City Engineer.

RECOMMENDATION:

1. Approve plans and specifications
2. Authorize advertising for construction bid proposals

*** 12. APPROVE PLANS & SPECIFICATIONS: HALL PARK WALKWAY
(PROJECT NO. 5058) (STAFF CONTACT: STEVE ERICKSON 586-3317)**

BACKGROUND: Plans and specifications for the subject project have been completed in accordance with the approved Capital Improvement Program. The project consists of demolition, earthwork, and the renovation of the park pathways including the installation of fencing, lighting, and landscape improvements. The engineer's estimate for the work is approximately \$350,000. A copy of the project plan title sheet is included in the Council's agenda packet, and the complete plans and specifications are available for review in the office of the City Engineer. It is anticipated that additional funding will be required to award the project. Staff would request a budget appropriation after bid opening to award the project.

RECOMMENDATION:

1. Approve plans and specifications.
2. Authorize advertising for bid proposals for construction.

*** 13. APPROVE AND AUTHORIZE RECREATION SERVICES TO ENTER INTO A
CONTRACT WITH MAJOR LEAGUE SOCCER FOR SUMMER 2004 SOCCER CAMP
PROGRAMS NOT TO EXCEED \$10,000.00, SUBJECT TO APPROVAL AS TO FORM
BY THE CITY OF ATTORNEY (STAFF CONTACT: DALE FLUNOY, 586-3228)**

BACKGROUND: For the past 2 years Recreation Services has utilized the Major League Soccer Organization as its vendor providing youth soccer camps. The Major League Soccer Camps will provide certified personnel, instruction, and supplies for Recreation Services Summer Soccer Camp Programs 2004. The Major League Soccer camps are designed for boys and girls, ages 7-14 years old and camps will be held July 19-23, 2004 and August 2-6, 2004.

Should this request be approved, Recreation Services would enter into a contract for the Summer 2004 year with Major League Soccer Organization, in an amount not-to-exceed \$10,000. Funds are available from Recreation Services operating budget for this purpose.

RECOMMENDATION: Approve and authorize Recreation Services to enter into a contract with Major League Soccer for Summer 2004 Soccer Camp Programs not to exceed \$10,000.00, subject to approval as to form by the City of Attorney.

*** 14. APPROVE AND AUTHORIZE RECREATION SERVICES TO ENTER INTO A
CONTRACT WITH SKYHAWKS SPORTS PROGRAMS FOR SUMMER CAMP
PROGRAMS FOR SUMMER 2004 SPORTS CAMPS NOT TO EXCEED \$20,000.00,
SUBJECT TO APPROVAL AS TO FORM BY THE CITY OF ATTORNEY (STAFF
CONTACT: DALE FLUNOY, 586-3228)**

BACKGROUND: For the past 5 years Recreation Services has utilized the Skyhawks Sports Programs as its vendor providing youth sports camps. Skyhawks Sports Programs will provide certified personnel, instruction, and supplies for the City's Summer 2004 youth sports camps. The summer sports camps include basketball, flag football, volleyball, and golf. Mini-Hawks, a pre-school age camp (4-7 years old), which serves as an introduction to sports, is also included.

Should this request be approved, Recreation Services would enter into a contract for the Summer 2004 year with Skyhawks Sports Programs, in an amount not-to-exceed \$20,000. Funds are available from Recreation Services operating budget for this purpose.

RECOMMENDATION: Approve and authorize Recreation Services to enter into a contract with Skyhawks Sports Programs for Summer 2004 Sports Camps not to exceed \$20,000.00, subject to approval as to form by the City of Attorney.

- * 15. **AGREEMENT AMENDMENT: O'BRIEN KREITZBERG, PROJECT MANAGEMENT SERVICES, MONTAGUE EXPRESSWAY WIDENING PROJECTS, (PROJECT NOS. 4178, 4179, 4180, 4133, 4186, 5069, 7086, 7098) (STAFF CONTACT: DOUG DE VRIES, 586-3313)**

BACKGROUND: On November 2, 1999, City Council awarded a consultant contract to O'Brien Kreitzberg (OBK) for project management services related to Montague Expressway widening.

On September 19, 2000; March 20, 2001; December 4, 2001, and March 2, 2004, City Council approved agreement amendments to the contract with OBK. Since the original contract date, OKB has been acquired by URS Corporation Americas (URS). The original contract requires that both sides accept any reassignment of the terms of the contract. As the acquisition of OBK by URS constitutes a reassignment of the contract, an acknowledgement of this change is required. A letter to this effect is attached to this agenda packet. In no way has this change in ownership changed the requirements of the contract or limited the consultant's ability to meet those requirements. Neither has there been any change in the personnel provided by the consultant that was not requested by City Staff.

RECOMMENDATION: Approve Amendment No. 5 to the Agreement between the City of Milpitas and O'Brien Kreitzberg authorizing an assignment of the rights and obligations of that contract to URS Corporation Americas as the successor to O'Brien Kreitzberg.

- * 16. **APPROVE AGREEMENT: HARRIS DESIGN, ATHLETIC COURT RESURFACING (PROJECT NO. 5069) (STAFF CONTACT: DOUG DEVRIES, 586-3313)**

BACKGROUND: This project is included in the current five-year Capitol Improvement Program (CIP). The completed project will provide for the resurfacing of tennis, basketball and handball courts at Hall Park, Yellowstone Park, Gill Park, Pinewood Park, Dixon Landing Park, Calle Oriente Park and Milpitas High School. In accordance with the City's consultant selection procedure, Harris Design has been selected to evaluate, design and provide construction administration for the improvements for this project. Harris Design has submitted a scope of work with a fee estimated not to exceed \$71,035. The fee is considered reasonable for the work involved, and there are sufficient funds in the project budget to cover this cost.

RECOMMENDATION: Authorize the City Manager to enter into the agreement with Harris Design in the amount of \$71,035, subject to approval as to form by the City Attorney.

- * 17. **APPROVE AGREEMENT WITH DAN CLOAK ENVIRONMENTAL CONSULTING TO PROVIDE URBAN RUNOFF PERMIT PROGRAM SERVICES (STAFF CONTACT: DARRYL WONG 586-3345)**

BACKGROUND: Council approved development of a stormwater guidebook to assist developers in meeting new urban runoff controls mandated by the City's stormwater discharge permit. The guidebook is now being used. This request is to prepare general plan urban runoff amendments and to complete an operation and maintenance (O&M) guidebook to assist developers in preparing an O&M manual that will insure proper operation of urban runoff treatment facilities as is required by the City stormwater permit. Performance requirements, inspection coordination, and operation records that need to be maintained will be included in the manual.

The same consultant that helped develop the stormwater guidebook, Dan Cloak Environmental Consulting, is proposed for the development of the documents to provide continuity and consistency with the existing stormwater guidebook at a not-to-exceed cost of \$36,000. Sufficient funds are included in the Planning and Engineering operating budgets to cover this anticipated expenditure.

RECOMMENDATION: Authorize the City Manager to execute the consultant agreement with Dan Cloak Environmental Consulting for a not-to-exceed amount of \$36,000.

*** 18. AUTHORIZE PURCHASE OF NETWORK STORAGE EQUIPMENT (STAFF CONTACT: BILL MARION, 586-2701)**

BACKGROUND: The City of Milpitas currently supports over 30 network servers that operate critical applications such as the financial management system and various public safety applications. Data storage needs for these applications have grown greatly over the past few years and several of the servers are nearing maximum capacity. Rather than expand the capacity of each server, staff researched shared network storage and found it to be a less costly solution.

In addition to the need for increased storage, a recent financial audit suggested that the City provide an "on-line" backup of critical data to ensure rapid recovery in the event of a serious equipment failure or disaster. The various hardware options considered ranged from approximately \$30,000 to over \$50,000. In reviewing the technical and cost factors, staff found that the network storage solution from Winchester Systems met the requirements of the City and was the lowest cost solution. This equipment is available only from the manufacturer. Purchase is recommended at this time to provide expanded network storage prior to the implementation of planned public safety and utility billing applications and to implement the recommendations of the financial audit. Funding for this purchase is available in CIP# 8109, Desktop Technology.

RECOMMENDATION:

1. Approve the purchase of network storage equipment from Winchester Systems in an amount not to exceed \$29,825.74.

XX. CLAIMS AND DEMANDS

*** 19. APPROVE PAYMENT REQUESTS: MISCELLANEOUS VENDORS /CONTRACTORS (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$8,392.27 to Folger Graphics for printing of a four color, six page annual residential recycling program newsletter and mailing preparation for the Utility Engineering Division. (Funds are available from the Engineering Division operating budget for this service.)
2. \$9,203.42 to United GreenTech for the purchase of Rain Master radio controlled irrigation control equipment to be used to remotely control irrigation functions on Sinclair Road for the Trees and Landscape Maintenance Function. This is a portion of equipment required to implement Phase 5 of the central automated irrigation management system allocated in the 98-1 Lighting and Landscape Maintenance District. (Funds are available from the Public Works, 98-1 Lighting and Landscape Maintenance District Fund operating budget for this purchase.)

RECOMMENDATION: Approve the purchase requests.

XXI. ADJOURNMENT

CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
March 2, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

CONFERENCE WITH LABOR NEGOTIATOR

(Pursuant to Government Code Section 54957.6)

Unrepresented Employee: City Manager

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES: February 17, 2004

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

Proclamation:

- Black History Hall of Fame Inductees: Sandra Edwards, Dr. Geraldine Forte, Beverly James, and Jim Johnson
- Colon Cancer Awareness Month

Commendations:

- Chinese Club & Vietnamese Club, Milpitas High School, for 2004 Lunar New Year Show

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. APPROVAL OF AGENDA

XI. CONSENT CALENDAR (Items with Asterisks)

XII. PUBLIC HEARING

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: February 17, 2004

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

***RA5. Approve Contract Extension for Audit Services With Maze & Associates Accountancy Corporation (Staff Contact: Emma Karlen, 586-3145)**

***RA6. Approve Agreement Amendment: Nolte & Associates, Milpitas Midtown Garage Right-of-Way (Project No. 8154) (Staff Contact Mike McNeely 586-3301 / Greg Armendariz 586-3220)**

RA7. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

- 1. Discussion and Action Related to Earlier Release of Agendas and Staff Reports for Council Meetings: Councilmember Gomez (942-1110 or 586-3031)**

Sister Cities Commission

- 2. Request for Sister City Relationship and Approval of Memorandum of Understanding: Huizhou City, China (Staff Contact: Leslie Stobbe, 586-3352)**

XV. UNFINISHED BUSINESS (None)

XVI. NEW BUSINESS

- 3. Review and Approve Ethics Survey (Staff Contact: Tambri Heyden, 586-3280)**

XVII. ORDINANCES

- * 4. Adopt Ordinance No. 261, Adding Chapter 18 to Title V of the Milpitas Municipal Code to Authorize Enforcement of Posted Use Regulations at Designated Public Sites and Facilities (Staff Contact: Steve Mattas, 586-3040)**

XVIII. RESOLUTIONS

- * 5. Adopt Resolution Finding Comcast of California in Violation of Franchise (Staff Contact: Blair King, 586-3060)**
- * 6. Adopt Resolution Accepting Grant Award and Approve Budget Appropriation: Coyote Creek Trail, Reach 1 (Project No. 4206) (Staff Contact: Mark Rogge, 586-3257)**

XIX. BIDS AND CONTRACTS

- 7. Consider Amendment No. 3 to the Employment Agreement between the City of Milpitas and Thomas J. Wilson**
- * 8. Approve a Conduit License Agreement Between the City of Milpitas and SBC California for an Exchange of City Owned Conduit and SBC Owned Conduit (Staff Contact: Terry Medina, 586-2703)**

- * 9. **Approve Agreement for Annual Hardware, Software and Support Services with Professional Conergence Solutions for the City's Three Public Business Exchanges (PBX) Systems Through February 28, 2007 (Staff Contact: Terry Medina, 586-2703)**
- * 10. **Approve Agreement Amendment: Harris & Associates, Milpitas Library Project, Winsor and Weller Avenue Plan Line, Right-of-Way Vacation, and Street Improvements (Project No. 8053) (Staff Contact: Greg Armendariz 586-3220)**
- * 11. **Approve Consultant Agreement with Harris & Associates for Contract Engineering Services on Various Land Development Projects (Staff Contact: Mehdi Khaila, 586-3327)**
- * 12. **Approve Agreement Amendment: Luhdorff & Scalmanini, Well Upgrade Program (Project No. 7076) (Staff Contact: Steve Erickson, 586-3317)**
- * 13. **Approve Agreement Amendment: O'Brien Kreitzberg, Project Management Services, Various Capital Improvement Projects (Staff Contact: Steve Erickson, 586-3317)**
- * 14. **Approve Plans and Authorize to Bid: Great Mall Parkway Street Trees And Mulch, (Project No. 4133) (Staff Contact: Doug De Vries 586-3313)**
- * 15. **Award of Bid for Purchase of 2 File Servers (Project No. 8107) (Staff Contact: Lou Zenzen, 586-3161)**

XX. CLAIMS AND DEMANDS

- * 16. **Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Lou Zenzen, 586-3161)**

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MARCH 16, 2004, AT 7:00 P.M.**

**CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
March 2, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard**

XII. PUBLIC HEARING

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: February 17, 2004

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

***RA5. APPROVE CONTRACT EXTENSION FOR AUDIT SERVICES WITH MAZE & ASSOCIATES ACCOUNTANCY CORPORATION (STAFF CONTACT: EMMA KARLEN, 586-3145)**

BACKGROUND: The City entered into a contract for audit services with Maze and Associates, a Certified Public Accounting firm on May 16, 2000. The scope of the service includes issuance of audit reports on the financial statements of the City, Redevelopment Agency, Milpitas Public Financing Authority, Single Audit, and Transportation Development Act. The contract covers the audits for fiscal years 1999-2000 through 2001-02 with an option to extend the contract to include fiscal years 2002-03 and 2003-04, subject to the annual review and recommendation of the Director of Finance. If the City Council approves the extension of the audit services, fiscal year 2003-04 will be the final year of this contract.

Maze and Associates has provided the City with an engagement letter to conduct audit services for fiscal year 2003-04 for a fee not to exceed \$86,859. Pursuant to the agreement, the fee is based on the FY 2002-03 audit fees adjusted by the Bay Area Consumer Price Index and also includes a \$1,500 one-time review fee of the 2003 Redevelopment Agency Tax Allocation bonds. There are sufficient funds available from the FY 2003-04 budget for this service.

RECOMMENDATION: Authorize the extension of the contract for audit services with Maze and Associates Accountancy Corporation for fiscal year 2003/04.

***RA6. APPROVE AGREEMENT AMENDMENT: NOLTE & ASSOCIATES, MILPITAS MIDTOWN GARAGE RIGHT OF WAY (PROJECT NO. 8154) (STAFF CONTACT MIKE MCNEELY 586-3301 / GREG ARMENDARIZ 586-3220)**

BACKGROUND: On November 4, 2003, City Council approved an agreement amendment with Nolte & Associates to appraise 3 parcels between Winsor St. and the Railroad. With the approval by the Council on February 17, 2004, of the new library and midtown parking garage concept, three additional property acquisitions will be needed. These parcels are located to the south of the Library parcel between Winsor St. and North Main St. The fee associated with these services is not to exceed \$71,000, which is considered reasonable for the scope of work. A budget appropriation of \$80,000 is requested from the 2003 RDA bond proceeds to cover the costs associated with these professional services. An additional appropriation will be necessary at a later date when acquisition costs are known.

RECOMMENDATION:.

1. Authorize the City Manager to execute the agreement amendment with Nolte & Associates, in the amount of \$71,000, subject to approval as to form by the City Attorney.
2. Approve the budget appropriation of \$80,000 for Project No. 8154 for the additional services plus staff time.

RA7. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

1. DISCUSSION AND ACTION RELATED TO EARLIER RELEASE OF AGENDAS AND STAFF REPORTS FOR COUNCIL MEETINGS: COUNCILMEMBER GOMEZ (942-1110 OR 586-3031)

BACKGROUND: Councilmember Gomez is asking the Council to discuss and consider taking action to release Council agendas and staff reports earlier than the current practice of making them available on the Thursday prior to the Tuesday City Council meeting.

RECOMMENDATION: Discuss and direct staff accordingly.

Sister Cities Commission

2. REQUEST FOR SISTER CITY RELATIONSHIP AND APPROVAL OF MEMORANDUM OF UNDERSTANDING: HUIZHOU CITY, CHINA (STAFF CONTACT: LESLIE STOBBE, 586-3352)

BACKGROUND: On July 24, 2003, the Sister Cities Commission passed a formal recommendation to the City Council for a sister city relationship with Huizhou, China and on September 25, 2003, the Commission amended its approval to recommend a proposed Memorandum of Understanding (MOU) that included a two-year relationship duration and report to Council. Huizhou City is located approximately 53 miles north of Hong Kong, in the Guangdong Province, and was founded over 1,400 years ago. It has a resident population of 3.2 million, however the population within the main center of Huizhou City is one-half million. This is where the government seat resides. During its five-month review of a sister cities relationship between Milpitas and Huizhou City, and after interviews with stakeholders, including residents on a Huizhou-Milpitas Sister Cities Committee, the Commission determined that a culturally-based relationship would be mutually beneficial to both cities.

The MOU reflects the Commission's expectation of one annual cultural exchange to each city and that visit details would be cooperatively agreed upon prior to conducting cultural exchanges. It recognizes the involvement of citizens, civic and business groups as ambassadors of goodwill to organize cultural exchanges that may include art, history, education, health and sports interests, a study of business and commerce, and other information gathering. A final draft MOU and listing of Huizhou-Milpitas Sister City Committee members is included in the agenda packet.

RECOMMENDATION: Approve the Sister Cities Commission's recommendation to enter into a two-year sister city relationship with Huizhou City, China, pending announcement from Chair Debra Garcia regarding filing and board formation of a non-profit sister cities association. Authorize Mayor Esteves' signature of an original MOU at a future Council meeting.

XV. UNFINISHED BUSINESS (None)
XVI. NEW BUSINESS

3. REVIEW AND APPROVE ETHICS SURVEY (STAFF CONTACT: TAMBRI HEYDEN, 586-3280)

BACKGROUND: Task 1 – Background Review of the city’s ethic project has been completed and involves three deliverables: a stakeholder report, a recommended plan for development of the ethics code and a draft awareness survey. Over the past four weeks and as of February 23, 2004, Dr. Shanks, the ethics consultant, conducted 24 one-on-one interviews to discover the unique strengths, weaknesses, opportunities and threats facing an ethics code effort in the city. Interviews were conducted with City Council members, senior management, the city manager and assistant city manager, the Milpitas Unified School District superintendent, the editor of the Milpitas Post, school district boards members, and former Council candidate Paul Hay. A group stakeholder interviews of the Community Advisory Commission (CAC), chairs of all other city boards and commissions and the public was conducted at a February 18, 2004, special CAC meeting and attended by 27 individuals. The results of those interviews will be contained within the consultant’s forthcoming stakeholder report.

Based on the information from the stakeholder interviews and meeting, the consultant is preparing a plan on how to move forward with development of an ethics code. This plan will include recommendations for ways to integrate the interests of all key stakeholders into the code preparation effort. The CAC will continue to lead as the forum for receiving community input. Special CAC meetings for the purpose of code development will be scheduled during March and April. Attendance by representatives of the various groups to whom the ethics code will apply (campaign candidates, elected and appointed officials, and management staff) is of utmost importance and will be arranged.

Information from the stakeholder interviews and meeting was also used to prepare the draft survey included in the Council’s agenda materials. The ethics steering committee, comprised of a subset of management staff and CAC members, is in the process of reviewing the survey. The Committee has determined that requests to complete the survey will be distributed to a random sample of Milpitas households (1,184) to ensure statistical validity. The survey questions are designed to measure the public’s opinion of appropriate conduct by campaign candidates elected and appointed officials, and City management staff. Survey responses, due the third week in March, will provide essential information necessary to proceed with the ethics code development workshops.

RECOMMENDATION: Approve the draft ethics survey.

XVII. ORDINANCES

- * **4. ADOPT ORDINANCE NO. 261, ADDING CHAPTER 18 TO TITLE V OF THE MILPITAS MUNICIPAL CODE TO AUTHORIZE ENFORCEMENT OF POSTED USE REGULATIONS AT DESIGNATED PUBLIC SITES AND FACILITIES (STAFF CONTACT: STEVE MATTAS, 586-3040)**

BACKGROUND: At the February 17, 2004 City Council meeting, the City Council introduced Ordinance No. 261. The proposed ordinance would authorize owners and operators of public facilities to post signage outlining rules and regulations governing the use of the facilities, and provides that violation of posted rules and regulations is punishable as an infraction. The ordinance is broadly worded to allow enforcement of such posted regulations in any public facility.

RECOMMENDATION:

1. Waive full reading of the ordinance.
2. Adopt Ordinance No. 261 adding Chapter 18 to Title V of the Milpitas Municipal Code to authorize enforcement of posted use rules and regulations at designated public sites and facilities.

XVIII. RESOLUTIONS

- * **5. ADOPT RESOLUTION FINDING COMCAST OF CALIFORNIA IN VIOLATION OF FRANCHISE (STAFF CONTACT: BLAIR KING, 586-3060)**

BACKGROUND: On February 17th, the City Council directed staff to prepare a resolution to find Comcast in violation of the Cable Communications Franchise Ordinance and Agreement. This action was taken based upon the Council's receipt of a report noting violations of the franchise agreement, specifically franchise violations with regard to failing to properly remit franchise fees, grounding and installation issues, failure to install an Institutional Network, and restricted access to studio facilities. These issues had previously been brought to Comcast's attention in the hope that resolution could be achieved in the context of franchise negotiations. However, given the delays in reaching a new franchise agreement, it was recommended that enforcement under the existing franchise be initiated.

Legal Counsel has reviewed the resolution included in the Council's agenda packet. The Milpitas Municipal Code provides that Comcast be noticed of the violations and given an opportunity to cure deficiencies. Should Comcast failure to respond, the Council will have the option to pursue remedies contained in the franchise ordinance.

RECOMMENDATION: Adopt a resolution finding Comcast of California in franchise noncompliance for failure to install an Institutional Network, for failure to provide a studio for residents to produce PEG Programming, for failure to correct grounding issues, and for failure to properly remit franchise fees.

* **6. ADOPT RESOLUTION ACCEPTING GRANT AWARD AND APPROVE BUDGET APPROPRIATION: COYOTE CREEK TRAIL, REACH 1 (PROJECT NO. 4206) (STAFF CONTACT: MARK ROGGE, 586-3257)**

BACKGROUND: This project provides trail improvements along Coyote Creek, including installation of trail surfacing from North McCarthy Boulevard at the north city limits, to Ranch Drive; trail access points; and trail amenities.

This project has received an Association of Bay Area Governments (ABAG) Bay Trail grant of \$340,000, and a Transportation For Clean Air (TFCA) grant for \$95,000. Most recently, the Santa Clara Valley Water District (SCVWD) has awarded the City of Milpitas a grant of \$89,400, which will allow for construction of a trail staging area. The ABAG and TFCA grants are included in the approved Capital Improvement Project budget. The SCVWD grant was awarded after the CIP approval process last year, and therefore was not included in the approved project budget. Staff recommends approval of a budget appropriation of \$89,400 of the SCVWD reimbursement grant. Staff also recommends adoption of a resolution demonstrating acceptance of the grant award, in accordance with the grant program procedures. Staff is currently reviewing the draft funding agreement, which is subject to approval by the City Attorney.

RECOMMENDATION:

1. Adopt resolution demonstrating acceptance of the grant award from the Santa Clara Valley Water District.
2. Approve a budget appropriation of \$89,400 of the Santa Clara Valley Water District grant.

XIX.

BIDS AND CONTRACTS

7. CONSIDER AMENDMENT NO. 3 TO THE EMPLOYMENT AGREEMENT BETWEEN THE CITY OF MILPITAS AND THOMAS J. WILSON

BACKGROUND: The City Council is considering an amendment to the Employment Agreement between the City and the City Manager, Thomas J. Wilson. The terms of the proposed agreement will be provided in a presentation at the City Council meeting.

RECOMMENDATION: Consider and act upon the proposed contract amendment.

- * **8. APPROVE A CONDUIT LICENSE AGREEMENT BETWEEN THE CITY OF MILPITAS AND SBC CALIFORNIA FOR AN EXCHANGE OF CITY OWNED CONDUIT AND SBC OWNED CONDUIT (STAFF CONTACT: TERRY MEDINA, 586-2703)**

BACKGROUND: The City adopted a Master Telecommunications Policy (Resolution No. 6353) in September of 1994 and in 1995 Council adopted a Master Telecommunications Plan. This plan included the installation of a fiber optic network to provide voice, video and data services to the City's main facilities. On May 1st, 1997, the City issued a Request for Proposal (RFP) for network equipment for the first phase of the Tele/Data network infrastructure, along with proposals for future phases to complete the network build out. The initial phase of the telecommunications capital project for installation of the fiber ring was completed in December 1998. Phase I is operational, with the City now having a fully functioning fiber optic network backbone. Phase II completed the connections for 3 City locations that included: the Public Works / Police Department building, the temporary City Hall and Fire Station 1 providing voice, data, and video capability. Phase III involves the connection of the seven remaining City facilities, to include Fire Stations 2, 3 and 4, the Great Mall Substation, the Senior Center, the Sports Center and the Community Center.

Many of the activities associated with Phase III have been completed including connection to Fire Stations 3 and 4, the Great Mall Substation, the Community Center and the new City Hall. Connection to the Sports Center has been accomplished temporarily through the usage of a wireless bridge between City Hall and the Sports Center. The conduit for connecting the temporary Senior Center was placed by Public Works and Inspection staff during the site improvements for the Senior Center Modular buildings. The new Senior Center and new Library connections will be addressed at the time of their renovation. Thus only Fire Station 2 remains to be added to the City's Fiber Optic Network.

In 2001, the City entered into an agreement with Grifcar Partners for a telecommunications easement at the northern most section of the City's Fiber Optic Ring. This agreement provided the City the opportunity to run Fiber Optic Cable through the City's conduit, using the telecommunications easement and 4 2" conduits running under highway 880 at Dixon Landing to access the McCarthy Ranch area.

SBC has expressed an interest in leasing 2 of the 2" conduits running under highway 880 in exchange for providing the City with access to SBC conduit running from Fire Station 1 to Fire Station 2 and from City Hall to an area in close proximity to the Sports Center. In total the City will be providing SBC with 2,144' of unused City conduit in exchange for 9,809' of SBC conduit. The agreement provides for no cost to the City and no cost to SBC.

There is no funding required for entering into the Conduit License Agreement. Approval of this agreement will provide the City with the opportunity to complete the Fiber Optic connection between Fire Station 1 and Fire Station 2 and at the same time provide a redundant route back to City Hall. Additionally, the City will be prepared when the time arrives to connect the Sports and Teen Centers to the City's Fiber Optic Network by using the SBC conduit running from City Hall to a location close to the Sports Center complex.

RECOMMENDATION: Authorize the City Manager to approve a Conduit License Agreement between the City of Milpitas and SBC California for the exchange of City owned conduit and SBC owned conduit subject to approval as to form by the City Attorney.

- * **9. APPROVE AGREEMENT FOR ANNUAL HARDWARE, SOFTWARE AND SUPPORT SERVICES WITH PROFESSIONAL CONERGENCE SOLUTIONS FOR THE CITY'S THREE PUBLIC BUSINESS EXCHANGES (PBX) SYSTEMS THROUGH FEBRUARY 28, 2007 (STAFF CONTACT: TERRY MEDINA, 586-2703)**

BACKGROUND: In fiscal year 1999/00, the City of Milpitas implemented a telephone system that supported the communications needs of the City through three Private Business Exchanges

(PBX's). The system included hardware, licensed software and maintenance support provided by NEC, the original vendor of the telephone system. Hardware and software maintenance and support of the system were provided through a five-year maintenance agreement scheduled to expire in April 2004.

Beginning in September 2003, staff began to explore the possibilities of reducing the maintenance costs for support of the City's PBX's and at the same time improve the level of service that we were receiving. NEC, the original vendor of the system, had not been providing timely service and had on occasion been non-responsive to service requests. Since the maintenance and support of the telephone system is a highly specialized field staff conducted an extensive search for a responsive vendor that could meet the needs of the City in a timely fashion. Professional Convergence Solutions (PCS) is a highly respected provider of hardware and software maintenance on the type of phone system that the City operates. PCS has responded to the City's needs in times of emergencies and has been very competitive in their charges as compared to NEC.

The maintenance term with NEC will expire in April 2004 and requires renewal to ensure continuation of the software license and hardware and software support of the City's Telephone System. Staff is recommending that the City change its annual hardware, software and support services agreement from NEC to PCS at the conclusion of the NEC agreement. Funding for the agreement has already been approved in the Information Services operational budget. No additional funding is required for this agreement.

RECOMMENDATION: Authorize the City Manager to approve an Agreement between the City of Milpitas and Professional Convergence Solutions for annual hardware, software and support services through February 28, 2007, in an amount not to exceed \$54,432 subject to approval as to form by the City Attorney.

*** 10. APPROVE AGREEMENT AMENDMENT: HARRIS & ASSOCIATES, MILPITAS LIBRARY PROJECT, WINSOR AND WELLER AVENUE PLAN LINE, RIGHT OF WAY VACATION, AND STREET IMPROVEMENTS (PROJECT NO. 8053) (STAFF CONTACT: GREG ARMENDARIZ 586-3220)**

BACKGROUND: On October 7, 2003, City Council awarded a consultant contract to Harris and Associates for mapping, survey, and utility engineering services as part of the library pre-design effort for Winsor, Weller, and Main Street. Harris has completed the site survey, aerial mapping, and is currently working on the off-site utility engineering for Winsor and Weller Avenues which have long lead times.

Staff now proposes to amend Harris's agreement to include preparation of the official Plan Lines for portions of Winsor and Weller Avenues, preparation of documents for vacation of rights of way, and preparation of final plans, specifications, and estimates for Winsor Avenue street improvements. Staff has negotiated the scope of work with Harris for these professional services, with a proposed not-to-exceed amount of \$29,915.00. Funds are available in the project budget for this amendment.

RECOMMENDATION: Authorize the City Manager to execute the agreement amendment with Harris and Associates in the amount not to exceed \$29,915.00, subject to approval as to form by the City Attorney.

*** 11. APPROVE CONSULTANT AGREEMENT WITH HARRIS & ASSOCIATES FOR CONTRACT ENGINEERING SERVICES ON VARIOUS LAND DEVELOPMENT PROJECTS (STAFF CONTACT: MEHDI KHAILA, 586-3327)**

BACKGROUND: Several major private development projects with very aggressive construction schedules have been submitted to the City for review and approval. In order to meet the project schedules, it is recommended that the City secure contractual engineering services.

In accordance with the City's consultant selection, staff negotiated with Harris & Associates to provide an engineering plan checker to work at City Hall as an extension of Land Development staff. Harris & Associates is especially suited for this assignment because it only provides services to public agencies and has the required expertise. Sufficient funds for this fiscal year are available in the Engineering Division budget and it will be fully reimbursed from developer funds.

RECOMMENDATION: Approve agreement and authorize City Manager to execute the agreement subject to approval as to form by the City Attorney.

*** 12. APPROVE AGREEMENT AMENDMENT: LUHDORFF & SCALMANINI, WELL UPGRADE PROGRAM (PROJECT NO. 7076) (STAFF CONTACT: STEVE ERICKSON, 586-3317)**

BACKGROUND: This project is included in the current five-year Capital Improvement Program (CIP), and provides for the installation of back-up potable water well in the new City Park to be completed at the end of East Curtis Avenue by the Parc Metropolitan developer. The project is in two phases, starting with the drilling of the well itself. Phase 2 includes completion of the pump building and installation of mechanical and electrical equipment. The well drilling and development (phase 1) was successfully completed last fall.

The standard practice for well drilling and development require that the construction operations be continuous and non-stop 24-hours per day for up to several weeks until completed. Due to the specialty involved with well construction, the City obtained the services of Luhdorff & Scalmanini (L&S) to provide professional well construction inspection and testing services. Several days of additional construction inspection, testing, and analysis as well as a design modification was required during the drilling operations due to installation difficulties. Staff proposes to amend the consultants contract to provide compensation not to exceed \$10,000 for the additional services. There are sufficient funds in the project budget for this fee.

RECOMMENDATION: Authorize the City Manager to enter into the agreement amendment with Luhdorff & Scalmanini in the amount not to exceed \$10,000 subject to approval as to form by the City Attorney.

*** 13. APPROVE AGREEMENT AMENDMENT: O'BRIEN KREITZBERG, PROJECT MANAGEMENT SERVICES, VARIOUS CAPITAL IMPROVEMENT PROJECTS (STAFF CONTACT: STEVE ERICKSON, 586-3317)**

BACKGROUND: On November 2, 1999, City Council awarded a consultant contract to O'Brien Kreitzberg (OBK) for project management services related to various Capital Improvement Program projects. The current volume of Capital Improvement Program projects continue to require intensive coordination and oversight. Therefore, it is proposed that OBK continue to provide project management services for approximately \$9 million worth of projects through March 2005, including Montague Expressway widening, I-880/Tasman Drive modifications, water system air relief valves, athletic court resurfacing, and the South Milpitas Blvd. water line. These services include construction management, project scheduling, troubleshooting, coordination with outside agencies, and tracking of project expenditures. OBK has agreed to perform these services for a fee not to exceed \$329,650. Funds are available in the respective project budgets.

RECOMMENDATION: Authorize the City Manager to execute the agreement amendment with O'Brien Kreitzberg for project management services for fees not to exceed \$329,650, subject to approval as to form by the City Attorney.

*** 14. APPROVE PLANS AND AUTHORIZE TO BID: GREAT MALL PARKWAY STREET TREES AND MULCH (PROJECT NO. 4133) (STAFF CONTACT: DOUG DE VRIES 586-3313)**

BACKGROUND: On February 19, 2002, City Council approved a consultant contract with Sugimura & Associates Architects to develop plans and specifications for landscaping along Great Mall Parkway. In accordance with the approved five-year Capital Improvement Program (CIP), plans and specifications for the installation of trees along Great Mall Parkway and replacement mulch in the center medians have been completed.

The engineer's estimate for the work is approximately \$175,000, and funds are available in the project budget. A copy of the project plan title sheet is included in the Council's agenda packet. Complete plans and specifications are available for review in the office of the City Engineer.

RECOMMENDATION:

1. Approve plans and specifications.
2. Authorize advertising for bid proposals for construction.

*** 15. AWARD OF BID FOR PURCHASE OF 2 FILE SERVERS (PROJECT NO. 8107)
(STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: Staff requested bids from 22 dealers on Purchasing's bidders list for 2 file servers for the new utility management system. These servers are required to provide additional storage capacity and are needed at this time in order to meet the utility management system implementation schedule. Eight dealers responded with bids ranging from \$15,211.29 to \$23,413.52. The following is the recap of bids received by the five lowest bidders which includes freight and tax:

Surah, Inc.	\$15,211.29
Golden Gate Systems	\$15,422.95
Netis Technology	\$16,984.43
NorthBay Networks	\$18,460.70
CDW Government	\$18,554.06

There are sufficient funds in the Finance Computer System CIP (Project No. 8107) budget for this purchase.

RECOMMENDATION: Award the bid for the file server to Surah, Inc. as the lowest bidder in the amount of \$15,211.29 and authorize the purchase.

XX. CLAIMS AND DEMANDS

*** 16. APPROVE PAYMENT REQUESTS: MISCELLANEOUS VENDORS / CONTRACTORS
(STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$6,906.74 to Tractor Equipment Co for low-pressure pump and holding tank hydraulic cylinder repairs and replacement of boom controls on the sewer hydro truck for the Fleet Maintenance Function. (Funds are available from the Public Works Department operating budget for this repair.)
2. \$9,255.38 to TBL Packaging & Distribution for the purchase of 15,000 desk side recycling containers for the Commercial Recycling Program for the Utility Engineering Function. The cost includes the cardboard containers, printing on four sides, die cuts, setup charges and delivery charges. (Funds are available from the Engineering Division operating budget for this purchase.)
3. \$7,794.00 to All American Rentals for the purchase of a replacement aerial work platform to be used by staff for providing access to the interior high reach areas of all city facilities for

routine maintenance operations for the Facilities Maintenance Function. All American Rentals submitted the lowest bid. (Funds are available from the Equipment Replacement Fund for this purchase.)

RECOMMENDATION: Approve the purchase requests

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MARCH 16, 2004, AT 7:00 P.M.**

CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
February 17, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

1. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Pursuant to Government Code Section 54956.9[a])

Title: Milpitas v. Turner Construction et al.

Santa Clara County Superior Court Case No. CV008400

2. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Pursuant to Government Code Section 54956.9[a])

Title: Milpitas v. Sobek

Santa Clara County Superior Court Case No. CV816141

3. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: APN Nos. 86-12-015, 86-12-016, and 86-12-020. 112 N. Main Street

Negotiating Party: Milpitas Redevelopment Agency

Under Negotiation: Terms and Conditions for Acquisition of Property

4. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: APN Nos. 28-24-015, 28-24-014, 28-24-020, and 28-24-026. 130, 110, and 94 Winsor

Negotiating Party: Milpitas Redevelopment Agency

Under Negotiation: Terms and Conditions for Acquisition of Property

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES: February 3, 2004

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

Proclamation:

Lechi Nguyen, Gene Schwab Memorial "Service Above Self" Award

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

- IX. ANNOUNCEMENTS**
- X. APPROVAL OF AGENDA**
- XI. CONSENT CALENDAR (Items with Asterisks)**
- XII. PUBLIC HEARING (None)**
- XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**
- RA1. CALL TO ORDER BY THE MAYOR**
- RA2. ROLL CALL**
- RA3. APPROVAL OF MINUTES: February 3, 2004**
- RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)**
- RA5. Review and Approve Library Building Program and Cost Plan: Library (Project No. 3394) (Staff Contact: Greg Armendariz, 586-3220)**
- *RA6. Resolution Granting Initial Acceptance: Milpitas City Hall (Project No. 8026) (Staff Contact: Greg Armendariz, 586-3220)**
- *RA7. Approve a Consultant Services Agreement with Swinerton Management & Consulting, and a Public Improvement Design Cost Agreement with KB Homes, (Various Projects) (Staff Contact: Greg Armendariz, 586-3220 and James Lindsay, 586-3274)**
- RA8. AGENCY ADJOURNMENT**
- XIV. REPORTS OF OFFICERS AND BOARDS**
- City Council**
- *1. Approve Appointment to the Parks, Recreation, and Cultural Resources Commission: Commission: Mayor Esteves**
- 2. Discuss Proposal to Establish a City of Milpitas Newsletter: Vice Mayor Dixon**
- Sister Cities Commission**
- *3. Request for Renewed Sister City Relationship and Approval of Memorandum of Understanding: Tsukuba City, Japan (Staff Contact: Leslie Stobbe, 586-3352)**
- XV. UNFINISHED BUSINESS**
- 4. Status Report on Cable TV Franchise Renewal and Compliance Issues (Staff Contact: Blair King, 586-3060)**
- 5. Odor Control Comprehensive Action Plan Update (Staff Contact: Darryl Wong, 586-3345)**
- XVI. NEW BUSINESS**
- *6. Approve One Organizational Youth Sports Assistance Fund Grant Request (Staff Contact: Kerrilyn Ely, 586-3231)**

- *7. Deny Marquee Request: Felipe and Vitalina Cardenas (Staff Contact: Jennifer Tagalog, 586-3206)**

XVII. ORDINANCE

- 8. Introduce Ordinance No. 261, Adding a New Chapter 18 to Title V of the Milpitas Municipal Code to Authorize Enforcement of Posted Use Regulations at Designated Public Sites and Facilities (Staff Contact: Steve Mattas, 586-3040)**

XVIII. RESOLUTION

- *9. Adopt Resolution Accepting Grant Award, Approve Budget Appropriation, Reject Bid Protest and Award Construction Contract: Berryessa Creek Trail, Reach 3 (Project No. 5074) (Staff Contact: Greg Armendariz, 586-3220)**

XIX. BIDS AND CONTRACTS

- *10. Approve Agreement Amendment: BKF Engineers, 237/I-880 Interchange (Project No. 4170); Dixon/I-880 Interchange (Project No. 4047); Tasman/I-880 Right-of-Way (Project No. 4039) (Staff Contact: Doug Devries 586-3313)**
- *11. Authorize the Purchase of Mobile Computing Equipment for the Fire Department. (Staff Contact: Bill Marion, 586-2701)**
- *12. Authorize Purchase of Replacement Public Safety Base Station Radio Equipment (Staff Contact: Lou Zenzen, 586-3161)**
- *13. Award Bid for Purchase of Eight File Servers (Project No. 8109) (Staff Contact: Lou Zenzen, 586-3161)**
- *14. Award Construction Contract: Piedmont Road Bike Lane and Sidewalk Improvements at St. John's Cemetery (Project No. 4214) (Staff Contact: Steve Erickson 586-3317)**

XX. CLAIMS AND DEMANDS

- *15. Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Lou Zenzen, 586-3161)**

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MARCH 2, 2004, AT 7:00 P.M.**

CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
February 17, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

XII. PUBLIC HEARING (None)

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: February 3, 2004

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

RA5. Review and Approve Library Building Program and Cost Plan: Library (Project No. 3394) (Staff Contact: Greg Armendariz, 586-3220)

BACKGROUND: The Library Subcommittee and staff have been working with the City's Library Consultant, Ripley Architects to develop a Library Building Program based on the Council approved Library Needs Assessment Study. A draft Building program and cost plan have been prepared and is included in the Council's packet. At the Council meeting, staff will provide a presentation on the library subcommittee's recommended building program and cost plan.

RECOMMENDATION: Review and approve the draft Library Building Program and Cost Plan.

***RA6. RESOLUTION GRANTING INITIAL ACCEPTANCE: MILPITAS CITY HALL (PROJECT NO. 8026) (STAFF CONTACT: GREG ARMENDARIZ, 586-3220)**

BACKGROUND: The project to provide interior furniture for the Milpitas City Hall was awarded to One Work Place on November 9, 2001. The City's contractor has completed the project. Therefore, an initial acceptance may be granted and the contractor's faithful performance bond may be reduced to \$42,795.90, which is 10% of the contract amount.

RECOMMENDATION: Adopt resolution granting initial acceptance subject to a one-year warranty period and reducing the faithful performance bond to \$42,795.90.

***RA7. APPROVE A CONSULTANT SERVICES AGREEMENT WITH SWINERTON MANAGEMENT & CONSULTING, AND A PUBLIC IMPROVEMENT DESIGN COST AGREEMENT WITH KB HOMES, (VARIOUS PROJECTS) (STAFF CONTACT: GREG ARMENDARIZ, 586-3220 AND JAMES LINDSAY, 586-3274)**

BACKGROUND: The City recently entered into three party agreements with the County of Santa Clara and KB Homes for the development of the County owned parcels surrounding the Elmwood facility and adjoining Abel Street. The new development will include the construction of new roadways, approximately 823 new residential units, and a new City park. KB Homes will be required to design and construct roadway and streetscape improvements on both sides of Abel Street between Corning Avenue and Great Mall Parkway. These improvements would be consistent with the Midtown Specific Plan streetscape standards.

The current five-year Capital Improvement Program (CIP) also includes several projects on Abel street (between Main Street and Calaveras Boulevard) including, installation of a free right turn onto Calaveras Blvd, the partial closure of Carlo Street, and the installation of dual left turns on Calaveras at Abel. In addition, it is proposed that Abel Street be improved beyond the boundaries of KB Home's responsibility consistent with the Midtown Plan.

In order to ensure the coordinated completion of these improvements with the KB development, a Public Improvement Design Cost Agreement has been drafted between the City and KB Homes. The City would engage the services of a project management consultant as needed to manage, coordinate, and oversee the design and construction of the various Abel Street improvement projects. Staff has interviewed several professional consultants and recommends that Swinerton Management & Consulting (SMC) provide these services. The proposed Swinerton project management team has recent experience in providing these services on a much larger and more complicated development in San Mateo.

SMC would provide professional project management services as needed in order to bring these projects to completion. Specific tasks that SMC will provide include project scope development, design coordination, plan and specification review, value engineering, monitoring project budget, bidding assistance, construction management, and construction administration. These services will be provided on a time and materials basis with a not-to-exceed maximum amount of \$469,000, which is considered reasonable for the level of service involved. There are sufficient funds in the respective CIP project budgets, RDA Bond Proceeds and cost sharing from KB Homes, for this cost.

KB Homes has agreed to pay \$120,000 for project management services provided by SMC related to Abel Street, and \$275,000 for the preparation of actual construction plans and specifications. The selection process for a design consultant is underway and will be presented to Council for approval at a later date. The City/Agency has agreed to authorize a withdrawal from the Elmwood Infrastructure Escrow Account to cover KB's cost relative to the above expenditures. In its negotiations with the County of Santa Clara to acquire the surplus Elmwood property, the Redevelopment Agency agreed to provide \$20 million to fund the Elmwood Infrastructure Account to support the development of the KB project.

A Capital Improvement Project for Abel improvements does not currently exist, in order to expedite this project a mid-year CIP will be presented to the Council for subsequent action.

RECOMMENDATION:

1. Authorize the City Manager to enter into the agreement with Swinerton Management in the amount not to exceed amount of \$469,000 subject to approval as to form by the City Attorney.
2. Authorize the City Manager to enter into an agreement with KB Homes to finance the management and design of the streetscape Improvements for Abel Street between Corning and Great Mall Parkway.

RA8. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

- *1. APPROVE APPOINTMENT TO THE PARKS, RECREATION, AND CULTURAL RESOURCES COMMISSION: COMMISSION: MAYOR ESTEVES**

BACKGROUND: Mayor Esteves is recommending the following changes and appointment to the Parks, Recreation, and Cultural Resources Commission: Moving Henry Ku from Alternate

No. 1 to fill the vacancy created by the resignation of Zeya Mohsin, for a term expiring June 2006; moving Judi Leonard From Alternate No. 2 to Alternate No. 1, with a term expiring June 2005; and appointing Kathryn Gray to the Alternate No. 2 position with a term expiring June 2004. A copy of Ms. Gray's application is included in the Council's agenda packets.

RECOMMENDATION: Approve the Mayor's appointment to the Parks, Recreation, and Cultural Resources Commission.

2. DISCUSS PROPOSAL TO ESTABLISH A CITY OF MILPITAS NEWSLETTER: VICE MAYOR DIXON

BACKGROUND: Vice Mayor Dixon requests discussion of a proposal to establish a City newsletter for distribution to Milpitas residents. The proposal asks for the Council's commitment to publishing four quarterly issues over a one-year period. The newsletter would be printed in-house with contractual services for layout and writing.

Estimated costs per edition of 20,000 copies are:

• Printing:	4 color	\$1,500
	2 color	\$1,350
• Layout/Writing:	8 pages	\$950
	12 pages	\$1,450
• Mailing:	Bulk rate through mailing house if presorted	\$2,250
• Total per edition:	8 pages, 4 color	\$4,700
	12 pages, 4 color	\$5,200
• Total for one year/4 editions:	8 pages, 4 color	\$18,800
	12 pages, 4 color	\$20,800

Proposed cost allocation: 1/2 General Fund and 1/2 Redevelopment Agency funds. The City may want to consider cost sharing with the school district for this project.

RECOMMENDATION: Discuss and direct staff as appropriate.

Sister Cities Commission

***3. REQUEST FOR RENEWED SISTER CITY RELATIONSHIP AND APPROVAL OF MEMORANDUM OF UNDERSTANDING: TSUKUBA CITY, JAPAN (STAFF CONTACT: LESLIE STOBBE, 586-3352)**

BACKGROUND: The Milpitas Sister Cities Commission conducted a special meeting on October 1, 2003, with Tsukuba City representatives to update its Memorandum of Understanding (MOU) with the City of Milpitas. Tsukuba City incorporated the Town of Kukizaki on November 1, 2002, and honored the existing MOU through August 2003. Tsukuba City is located approximately 60 miles northeast of Tokyo in the southwestern Ibaraki Prefecture. It has a resident population of 165,000. During its review of a sister cities relationship between the City of Milpitas and Tsukuba City, the Commission reviewed the past seven years of Milpitas' successful relationship with the Town of Kukizaki and explored the nature of a mutually beneficial relationship with Tsukuba City.

The Commission agreed with the Tsukuba International Relations Committee to reduce the number of students and adult travelers for cultural exchanges and has refined the agreement to

include coverage of airport transportation costs and food provisions at one event in each city. The Commission would request approval of any expenses and an appropriation from the Council's community promotions budget, estimated at \$2,600, prior to a visit from the Tsukuba delegation.

The MOU continues its tradition of one annual cultural exchange to each city. At its October 1, 2003, meeting, the Milpitas Sister Cities Commission unanimously approved recommending renewing this relationship with Tsukuba City through December 2008. The final draft MOU was approved for recommendation to the City Council at the Commission's January 22, 2004, meeting. Included in the Council's agenda packet is a copy of the MOU.

RECOMMENDATION: Approve the Sister Cities Commission's recommendation to enter into a four-year sister city relationship with Tsukuba City, Japan, and authorize the Mayor to sign the MOU.

XV. UNFINISHED BUSINESS

4. STATUS REPORT ON CABLE TV FRANCHISE RENEWAL AND COMPLIANCE ISSUES (STAFF CONTACT: BLAIR KING, 586-3060)

BACKGROUND: In January of 2003, the Council authorized the commencement of cable franchise renewal negotiations. Since Council's authorization, a technical review of the Milpitas cable system has been completed, a cable subscriber telephone survey conducted, a franchise fee desk audit completed, and a draft needs assessment produced. From these documents, a franchise agreement was drafted and forwarded to Comcast on October 27, 2003.

Cable franchise renewal negotiations are taking longer than originally anticipated. In order to accommodate franchise negotiations the franchise agreement has been extended from April 2003 to April 2004, a year beyond the initial franchise period.

Comcast was requested to respond to the draft franchise agreement by November 14, 2003. Comcast was also requested to respond to a report concerning franchise fee payments and a report identifying physical plant deficiencies.

Subsequent to Comcast receiving these documents, it has met once on November 24, 2003 with city staff. Scheduling difficulties have prevented subsequent meetings and little progress has been made in resolving current franchise compliance issues or addressing the negotiation of a successor franchise agreement. It had been hoped that current franchise issues could be addressed in the context of franchise renewal negotiations. However, considering the delay in franchise negotiation, it is believed that issues of current non compliance should be dealt with independently of the franchise negotiations. A presentation will identify open compliance issues and include recommended actions for resolution. A copy of the staff report and the agenda request summary has been forwarded to Eddie Garcia of Comcast.

RECOMMENDATION:

1. Note receipt and file staff report.
2. Direct staff to prepare a resolution for subsequent Council consideration to find Comcast in violation of the current franchise agreement.

5. ODOR CONTROL COMPREHENSIVE ACTION PLAN UPDATE (STAFF CONTACT: DARRYL WONG, 586-3345)

BACKGROUND: This is an update of the odor control coordination activities. Some of the key events that have occurred during the past month include:

1. Received minor comments from the regulatory agencies to the Odor Control Comprehensive Action Plan.
2. Began preparation of a complaint guideline door hanger for distribution to residents in northwest and Sunnyhills portions of the City in late February.
3. Bay Area Air Quality Management District (BAAQMD) began coordinating Memorandums of Understandings with possible odor generators as part of the Rapid Notification System.
4. Coordinated with the LEA and BFI to accelerate implementation of best management practices to include complete relocation of compost processing facilities to a paved area.
5. Reviewed professional odor control advisory services proposals. Staff has begun contract negotiations and anticipates submitting a consultant contract for Council approval in March.

The Bay Area Air Quality Management District (BAAQMD) has reported the following number of complaints logged in October: 96, November: 50, December: 16, January: 31.

RECOMMENDATION: Note receipt and file progress report.

XVI. NEW BUSINESS

***6. APPROVE ONE ORGANIZATIONAL YOUTH SPORTS ASSISTANCE FUND GRANT REQUEST (STAFF CONTACT: KERRILYN ELY, 586-3231)**

BACKGROUND: On June 17, 2003, the Milpitas City Council approved and appropriated \$10,000 for the Youth Sports Assistance Fund for the 2003-2004-budget year. Included in the Council agenda packet for review and consideration is one (1) Group Youth Sports Assistance Fund application.

Youth Sports Assistance Fund Application was received from Southpawprep, requesting \$1,131.50 to offset costs of the purchase of speed training jump ropes, super shoot rack, quick feet reaction balls, sports game plan software, medical kit (2), and scouting/coaching clipboards.

This applicant meets the eligibility for the grant process. Staff has reviewed the items requested and found that some requested items do not meet the application guidelines, under the section, "Funding consideration will be given", page 2, and item #3 states; "To one time activities or capital equipment purchases designed to address a significant need or problem which the organization cannot routinely finance."

Items requested that do not meet grant guideline criteria:

Scouting clipboards 4 @ \$22.00ea =	\$88.00
Speed training jump ropes 12@\$15.00 ea =	\$180.00
Quick feet reaction balls 7 @ \$8.50.ea =	<u>\$59.50</u>
Subtotal	<u>\$327.50</u>

Items that meet the grant guideline criteria:

Super Shoot Rack	\$350.00
Gameplan Software	\$130.00
Medical Kits 2@ 125.00	<u>\$250.00</u>
Subtotal	<u>\$730.00</u>

The Parks, Recreation and Cultural Resources Commission reviewed the Southpawprep application on February 2, 2003, and recommended approval of the staff recommended Organizational Youth Grant amount of \$730.00.

There is currently a balance of \$2,050.00 in the 2003-2004 Youth Sports Assistance Fund.

RECOMMENDATION: Approve one Organizational Youth Sports Assistance grant in the amount of \$730.00 as recommended by the Parks, Recreation and Cultural Resources Commission, leaving a balance of \$1,320.00 for the remainder of the Fiscal Year.

***7. DENY MARQUEE REQUEST: FELIPE AND VITALINA CARDENAS (STAFF CONTACT: JENNIFER TAGALOG, 586-3206)**

BACKGROUND: Felipe and Vitalina Cardenas have requested to use the City of Milpitas Marquee to advertise the following family event:

Marquee Request (to be displayed 3/6)
Happy 15th
Birthday
Elizabeth Cardenas

Pursuant to Resolution No. 6310 (Facility Use Rules and Regulations), the marquee is to be used for City sponsored activities and City Council must approve all exceptions to the marquee policy.

Included in the Council's agenda packet are a copy of the letter requesting usage of the marquee and a copy of the policy. In the past, the Council has denied requests to use the marquee for personal parties or functions.

RECOMMENDATION: Based on previous Council direction regarding personal marquee requests, staff is recommending denying this request.

XVII. ORDINANCE

8. INTRODUCE ORDINANCE NO. 261, ADDING A NEW CHAPTER 18 TO TITLE V OF THE MILPITAS MUNICIPAL CODE TO AUTHORIZE ENFORCEMENT OF POSTED USE REGULATIONS AT DESIGNATED PUBLIC SITES AND FACILITIES (STAFF CONTACT: STEVE MATTAS, 586-3040)

BACKGROUND: Vice-Mayor Dixon has requested that the City Council consider adopting an ordinance allowing for enforcement of posted rules and regulations governing use of specified public facilities. In particular, the request is related to the use of recreational facilities and athletic complexes owned and operated by the Milpitas Unified School District. The proposed ordinance, included in the Council's agenda packet, would authorize owners and operators of such facilities to post signage outlining rules and regulations governing the use of the facilities, and provides that violation of posted rules and regulations is punishable as an infraction. The ordinance is broadly worded, however, to allow enforcement of such posted regulations in any public facility.

Staff has received reports from the Milpitas Unified School District Department of Maintenance, Operations and Transportation that many of the district's playing fields and artificial field turf and all-weather track surfaces have been damaged by certain recreational activities. The District has implemented rules and regulations prohibiting these activities (including golf, cricket and field hockey), but reports that certain groups continue to use the fields inappropriately and outside of permitted hours, resulting in damage to playing surfaces. The proposed ordinance authorizes the District (and similar operators of other City public facilities) to post signage outlining rules and regulations for facility use, and provides that violations of the duly posted regulations may be punishable as an infraction.

Cities are not preempted from regulating use of public facilities. Under the California Constitution, general law cities may make and enforce within their limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws. Case law in the area generally provides that state laws with respect to trespass upon and misuse of school

grounds or similar public facilities do not preempt the field so as to preclude local regulation in the form of a local ordinance making such trespass or misuse an infraction or misdemeanor. Although numerous statutes regulate trespassory and inappropriate conduct at public facilities, case law reveals no legislative intent to foreclose local regulation, and suggests that a local ordinance may limit and regulate citizen use of school district playing fields based on "special local problems."

The proposed ordinance provides that operators of public facilities may post rules and regulations applicable to a given public facility in accordance with guidelines set up in the ordinance, and that violators of such regulations may be charged with an infraction pursuant to Milpitas Municipal Code Title I-1-4.09-1. The ordinance is broadly worded to subject all public facilities to such regulation by approved signage, and is drafted in a manner to allow the council in the future to permit regulation of additional areas.

RECOMMENDATION:

1. Waive reading beyond the title.
2. Introduce Ordinance No. 261 adding Chapter 18 to Title V of the Milpitas Municipal Code to authorize enforcement of posted use rules and regulations at designated public sites and facilities.

XVIII. RESOLUTION

- *9. ADOPT RESOLUTION ACCEPTING GRANT AWARD, APPROVE BUDGET APPROPRIATION, REJECT BID PROTEST AND AWARD CONSTRUCTION CONTRACT: BERRYESSA CREEK TRAIL, REACH 3 (PROJECT NO. 5074) (STAFF CONTACT: GREG ARMENDARIZ, 586-3220)**

BACKGROUND: This project provides for trail improvements, including installation of trail surfacing from Hillview Drive to Jacklin Road/Abel Street and related trail amenities. It also includes installation of a pedestrian bridge over the creek in the vicinity of Gill Park, to provide access to the town center area. The Santa Clara Valley Water District will be implementing additional flood protection improvements on Berryessa Creek at some point in the future. These trail improvements have been coordinated with and designed to accommodate the future flood protection plans.

This project has received a federal grant of \$375,000 and more recently, the Santa Clara Valley Water District has awarded the City another \$90,000 grant for the construction costs of the pedestrian bridge. The federal grant is included in the approved Capital Improvement Project. The second grant from the Santa Clara Valley Water District was approved after the CIP approval process last year, and the amount is not currently included in the project budget. Staff recommends approval of a budget appropriation of \$90,000. Staff also recommends adoption of a resolution demonstrating acceptance of the grant award, in accordance with the grant program procedures.

On December 16, 2003, the City Council approved plans and specifications for Berryessa Creek Trail, Reach 3 and authorized advertising for bids. The project was advertised and sealed proposals were opened on January 28, 2004. A total of nine bids were received, ranging from \$534,700 to \$896,265. The Engineer's estimate was \$585,000. The apparent low bid was received from Bugler Construction of Fremont. A copy of the bid results is included in the Council's packet.

The federal grant involves specific requirements, including that a portion of the work be provided by "Disadvantaged Business Enterprise" (DBE) firms. Bidders are to provide information on the DBE requirements. The low bidders' DBE submittals were due on February 3, 2004.

On February 2, 2004, the City received a bid protest from the second lowest bidder, Grade Tech of Castro Valley. The bid protest cited concerns regarding the low bid firm's compliance with federal requirements of the contract. Staff met with Grade Tech to ensure that the basis for their protest was properly understood. Staff also met with the low bidder, Bugler Construction, to discuss the firm's DBE efforts and its compliance with federal and contract requirements. Staff and the City Attorney's office have reviewed the bidders' submittals, considered all the information, and found that the low bidder's proposal is responsive. Further, the bid protest was found to have no merit. Staff therefore recommends rejection of the bid protest.

Staff recommends that the City Council waive minor irregularities in the low bidder's documentation and award the construction contract to the lowest responsive bidder, Bugler Construction of Fremont, for the low bid of \$534,700. Sufficient funds are available in the project budget.

RECOMMENDATION:

1. Adopt a resolution demonstrating acceptance of the grant award from the Santa Clara Valley Water District.
2. Approve a budget appropriation of \$90,000.
3. Reject the bid protest received from the second low bidder.
4. Waive minor irregularities in the bidder's documentation and award the construction contract for Berryessa Creek Trail, Reach 3 (Project No. 5074) to the lowest responsive bidder, Bugler Construction, in the amount of \$534,700.

XIX. BIDS AND CONTRACTS

- *10. APPROVE AGREEMENT AMENDMENT: BKF ENGINEERS, 237/I-880 INTERCHANGE (PROJECT NO. 4170); DIXON/I-880 INTERCHANGE (PROJECT NO. 4047); TASMAN/I-880 RIGHT-OF-WAY (PROJECT NO. 4039) (STAFF CONTACT: DOUG DEVRIES 586-3313)**

BACKGROUND: BKF Engineers is currently providing utility relocation, right-of-way, and other coordination services for the 237/I-880 Interchange, Dixon/I-880 Interchange, and Tasman/I-880 Interchange projects. Additional coordination services are necessary, primarily for the completion of necessary right-of-way transfers to Caltrans and the Valley Transportation Authority.

Staff recommends that BKF Engineers perform these additional services at a not to exceed amount of \$20,000.00, which is considered reasonable for the scope of work. Compensation would be on an as-needed basis. There are sufficient funds in the various capital improvement project budgets to cover this additional expense.

RECOMMENDATION: Authorize the City Manager to execute the agreement amendment with BKF Engineers, in the amount of \$20,000.00, subject to approval as to form by the City Attorney.

- *11. AUTHORIZE THE PURCHASE OF MOBILE COMPUTING EQUIPMENT FOR THE FIRE DEPARTMENT. (STAFF CONTACT: BILL MARION, 586-2701)**

BACKGROUND: In February of 2002, Council approved the purchase of mobile computers for the Police Department. This equipment has been received and installed. The final phase of the Public Safety Technology Project includes the installation of mobile computers in 18 vehicles for the Fire Department. The hardware specified for the mobile computing project utilizes touch screen technology and a standard computer platform that will allow Fire vehicles to receive mobile dispatch information and fire preplan information.

Staff recommends that the equipment be purchased from the same source as used for the Police Department project. This will provide a consistent mobile hardware platform in all Public Safety vehicles and facilitate on-going support and maintenance. Given the lead times for hardware delivery and installation, staff is recommending order placement at this time in order to complete installation prior to implementation of the new Computer Aided Dispatch System (CAD) in the 4th quarter of 2004. Funding for this purchase has been programmed since FY 01/02 in CIP No. 8109, and a delay in acquisition will impact the implementation of the new Computer Aided Dispatch System

RECOMMENDATION: Authorize the City Manager to execute a purchase order in an amount not to exceed \$149,731.52 for Mobile Computing Hardware and Equipment from Data911 Systems. .

***12. AUTHORIZE PURCHASE OF REPLACEMENT PUBLIC SAFETY BASE STATION RADIO EQUIPMENT (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: Staff issued a Request for Quotation for replacing a portion of the Public Safety two-way communication base radio system and ancillary equipment. These transmitters, repeaters and channel monitors are replacing existing infrastructure equipment that is between 10 and 16 years old and have been included in this fiscal year's capital outlay budget for replacement. Bid packets were sent to the seven bay area suppliers of Motorola equipment and four responded. The following is the recap of the four quotes received including tax and freight:

<u>Bidder</u>	<u>Amount</u>
Day Wireless Systems	\$68,966.40
Bear Communications	\$71,393.39
Peninsula Communications	\$72,063.11
Motorola, Inc.	\$77,436.83

There are sufficient funds in the Equipment Replacement Fund for the purchase of the radio systems and accessories.

RECOMMENDATION: Award the bid for the purchase of the two-way base radio equipment to the lowest bidder, Day Wireless Systems, in the amount of \$68,966.40 including tax and shipping.

***13. AWARD BID FOR PURCHASE OF EIGHT FILE SERVERS (PROJECT NO. 8109) (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: Staff requested bids from 21 dealers on Purchasing's bidders list for 8 file servers for the new public safety Computer Aided Dispatch (CAD) system. These servers are required to provide interfaces to State, Federal and Local law enforcement databases as well as communications to mobile computers in Police and Fire vehicles. In order to meet the CAD implementation schedule, purchase of this equipment is needed at this time. Eleven dealers responded with bids ranging from \$42,295.44 to \$59,934.12. The following is the recap of bids received by the five lowest bidders which includes freight and tax:

<u>Bidder</u>	<u>Amount</u>
Surah, Inc.	\$42,295.44
ICON Microsystems	\$44,708.33
NorthBay Networks	\$47,805.21
S H I	\$48,411.57
CDW Government	\$48,551.21

There are sufficient funds in the Desktop Technology CIP (Project No. 8109) budget for this purchase.

RECOMMENDATION: Award the bid for the file server to Surah, Inc. as the lowest bidder in the amount of \$42,295.44 and authorize the purchase.

***14. AWARD CONSTRUCTION CONTRACT: PIEDMONT ROAD BIKE LANE AND SIDEWALK IMPROVEMENTS AT ST. JOHN'S CEMETERY, PROJECT NO. 4214 (STAFF CONTACT: STEVE ERICKSON 586-3317)**

BACKGROUND: This project provides new roadway improvements including: slurry seal, curb & gutter, sidewalk, drainage inlets, street lighting, landscaping along the west side of Piedmont Road south of Aguilar Court. The project was advertised and sealed proposals were opened on Wednesday, February 4, 2004. The proposals ranged from \$308,838.20 to \$526,366.00. The Engineer's estimate for the work was \$344,000. The low bidder was Grade Tech, Inc..

RECOMMENDATION: Award the contract to Grade Tech, Inc. in the amount of \$308,838.20, subject to approval by the City Attorney.

XX. CLAIMS AND DEMANDS

***15. APPROVE PAYMENT REQUESTS: MISCELLANEOUS VENDORS / CONTRACTORS (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$111,797.00 to Santa Clara County Crime Laboratory for the City's share of annual costs of submitting physical evidence for analysis to the Major Case Unit for the Police Department. The City's share is 7.01% of the Crime Laboratory's annual operating costs. (Funds are available from the Police Department operating budget for these required services.)
2. \$13,000.00 to Day Wireless Systems for the removal of two-way radio, emergency lights, partitions and other equipment from out of service patrol cars and reinstalling in five newly purchased patrol cars for the Fleet Maintenance Division. (Funds are available from the Public Works Department operating budget for this service.)

RECOMMENDATION: Approve the purchase requests

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MARCH 2, 2004, AT 7:00 P.M.**

**CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
February 3, 2004
4:30 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard**

I. ROLL CALL (4:30 p.m.)

II. ADJOURN TO CLOSED SESSION

1. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

(Pursuant to Government Code Section 54957)

Title: City Manager

2. CONFERENCE WITH LABOR NEGOTIATOR

(Pursuant to Government Code Section 54957.6)

Unrepresented Employee: City Manager

3. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: APN Nos. 86-12-015, 86-12-016, and 86-12-020

Negotiating Party: Milpitas Redevelopment Agency

Under Negotiation: Terms and Conditions for Acquisition of Property

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES: January 20, 2004

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

Letter of Congratulations to the City of Milpitas – 50th Anniversary:

Mayor to read letter of congratulations to the City of Milpitas from Governor Arnold Schwarzenegger

Proclamation:

- Cliff Williams, in appreciation for contributions to the community

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. APPROVAL OF AGENDA

- XI. CONSENT CALENDAR (Items with Asterisks)**
- XII. PUBLIC HEARINGS (None)**
- XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**
- RA1. CALL TO ORDER BY THE MAYOR**
- RA2. ROLL CALL**
- RA3. APPROVAL OF MINUTES: January 20, 2004**
- RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)**
- RA5. Progress Report: Milpitas Public Library (Project No. 3394) (Staff Contact: Greg Armendariz 586-3220)**
- *RA6. Approve Authorization to Enter into Negotiations with Shapell Industries of Northern California, LLC for Affordable Housing Units (Staff Contact: Felix Reliford, 586-3071)**
- *RA7. City of Milpitas Investment Portfolio Status Report for the Quarter Ended December 31, 2003 (Staff Contact: Emma Karlen, 586-3145)**
- *RA8. Approve Budget Transfer to Add \$250,000 to the City Attorney's Department Budget for Fiscal Year 2003-2004 for Public Works Litigation Expenses with Funding of \$200,000 from the Redevelopment Agency Undesignated Reserve and \$50,000 from the Non-Departmental Contingent Reserve Fund, and Approve Two Purchase Orders to Meyers Nave for Public Works/Claims Related Litigation (Staff Contact: Steve Mattas, 586-3040)**
- RA9. AGENCY ADJOURNMENT**
- XIV. REPORTS OF OFFICERS AND BOARDS**
- City Council**
- 1. Adopt Resolution Supporting a Statewide Ballot Initiative Entitled *Local Taxpayers and Public Safety Protection* to Require Voter Approval Before the State Government May Take Local Tax Funds: Mayor Esteves**
- *2. Approve the Mayor's Appointments and Reappointment to the Community Advisory Commission and Sister Cities Commission: Mayor Esteves**
- 3. Discuss a Permanent Dedication to Honor Dr. Martin Luther King, Jr.: Councilmember Livengood**
- Parks, Recreation and Cultural Resources Commission**
- *4. Approve the Proposed Changes to the Family Child Care Assistance Fund Policies and Procedures (Staff Contact: Toby Librande, 586-3203)**
- XV. UNFINISHED BUSINESS (None)**
- XVI. NEW BUSINESS**

- *5. Accept Grant of Equipment from Tropos Networks, Inc. (Staff Contact: Bill Marion, 586-2701)**
- *6. Approve Request to the Santa Clara County Partnership for School Readiness (Staff Contact: Toby Librande, 586-3203)**
- *7. Approve Marquee Request: Annell Spencer (Staff Contact: Jennifer Tagalog, 586-3206)**

XVII. ORDINANCES (None)

XVIII. RESOLUTIONS

- *8. Adopt Resolution Summarily Vacating a Portion of Unnecessary Landscape and Sidewalk Easement Along the West Side of N. McCarthy Boulevard (Project No. 3030) (Staff Contact: Mehdi Khaila, 586-3328)**

XIX. BIDS AND CONTRACTS

- *9. Approve Budget Appropriation and Award Construction Contract: Berryessa Creek Trail, Reach 3 (Project No. 5074) (Staff Contact: Greg Armendariz, 586-3220)**
- *10. Approve Permittee Dedication and Improvement Agreement with Edsel Court Apartments (Project No. 2295) (Staff Contact: Mehdi Khaila, 586-3328)**

XX. CLAIMS AND DEMANDS

- *11. Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Lou Zenzen, 586-3161)**

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, FEBRUARY 17, 2004, AT 7:00 P.M.**

**CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
February 3, 2004
4:30 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard**

XII. PUBLIC HEARINGS (None)

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: January 20, 2004

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

RA5. PROGRESS REPORT: MILPITAS PUBLIC LIBRARY (PROJECT NO. 3394) (STAFF CONTACT: GREG ARMENDARIZ 586-3220)

BACKGROUND: The Library Subcommittee and staff are continuing to work on the Building Program for the Library. Staff will provide a brief presentation on the progress of the project.

RECOMMENDATION: Note receipt and file.

***RA6. APPROVE AUTHORIZATION TO ENTER INTO NEGOTIATIONS WITH SHAPELL INDUSTRIES OF NORTHERN CALIFORNIA, LLC FOR AFFORDABLE HOUSING UNITS (STAFF CONTACT: FELIX RELIFORD, 586-3071)**

BACKGROUND: Shapell Industries of Northern California, Milpitas, California is proposing to develop a residential project in the Town Center with approximately 65 residential units, and is interested in providing affordable housing with financial assistance from the Agency. The final details of the agreement will be presented to the City Council for approval at a later date. It is recommended that the Agency authorize staff to enter into negotiations with Shapell Industries of Northern California for the purpose of providing financial assistance from the Agency's 20% Affordable Housing Set-Aside funds. The Agency's authorization to enter into negotiations should not be considered implied approval for any of the forms of assistance requested by the developer. Any agreement negotiated is subject to the Agency/Council review and approval.

RECOMMENDATION: Approve authorization to enter into negotiations with Shapell Industries of Northern California to provide Agency Finance Assistance from its 20% Affordable Housing Set-Aside funds.

***RA7. CITY OF MILPITAS INVESTMENT PORTFOLIO STATUS REPORT FOR THE QUARTER ENDED DECEMBER 31, 2003 (STAFF CONTACT: EMMA KARLEN, 586-3145)**

BACKGROUND: In compliance with the State of California Government Code and the City's Investment policy, the City of Milpitas Investment Report for the quarter ended December 31, 2003, is submitted for your review and acceptance.

The Portfolio Summary Report included in the Council's agenda packet provides a summary of the City's investments by type. It lists the par value, market value, book value, percentage of portfolio, term, days to maturity, and the equivalent yields for each type of investment. The Portfolio Details Report provides the same information for each individual investment in the City's portfolio as of December 31, 2003.

On November 20, 2003, the Milpitas Redevelopment Agency (Agency) issued \$200 million Tax Allocation Bonds to provide funding for capital improvement projects and to refund the 1997 and 2000 Tax Allocation Bonds. Through competitive bidding, the Agency invested the net bond proceeds in a fixed rate Repurchase Agreement with Citigroup Global Markets, Inc. The City's investment portfolio as of December 31, 2003, includes the current balance of the bond proceeds investment of \$113,849,835.10.

As of December 31, 2003, the principal cost and market value of the City's investment portfolio was \$282,186,902.84 and \$284,116,640.19 respectively. When market interest rates increase after an investment is purchased, the market value of that investment decreases. Conversely, when market interest rates decline after an investment is purchased, the market value of that investment increases. If the investments are not sold prior to the maturity date, there is no market risk. Therefore, in accordance with the City's investment policy, all investments are held until maturity to ensure the return of all invested principal.

The City's effective rate of return for the period ended December 31, 2003, was 2.88%. The comparative benchmarks for the same period were 1.30% for LAIF (Local Agency Investment Fund) and 1.73% for the average 2 year Treasury Note. Excluding the long-term GNMA securities and Repurchase Investment Agreement, the weighted average maturity of the portfolio was 631 days.

The investment portfolio is in compliance with the City's investment policy. A combination of securities maturing, new revenues, and tax receipts will adequately cover the anticipated cash flow needs for the next six months. Cash flow requirements are continually monitored and are considered paramount in the selection of maturity dates of securities.

RECOMMENDATION: Note receipt, and file the investment report for the quarter ended December 31, 2003.

- *RA8. APPROVE BUDGET TRANSFER TO ADD \$250,000 TO THE CITY ATTORNEY'S DEPARTMENT BUDGET FOR FISCAL YEAR 2003-2004 FOR PUBLIC WORKS LITIGATION EXPENSES WITH FUNDING OF \$200,000 FROM THE REDEVELOPMENT AGENCY UNDESIGNATED RESERVE AND \$50,000 FROM THE NON-DEPARTMENTAL CONTINGENT RESERVE FUND, AND APPROVE TWO PURCHASE ORDERS TO MEYERS NAVE FOR PUBLIC WORKS/CLAIMS RELATED LITIGATION (STAFF CONTACT: STEVE MATTAS, 586-3040)**

BACKGROUND: This request is to approve a budget adjustment to allocate \$250,000 to the City Attorney's department for public works/claims litigation. These funds would be used for expert witness costs and attorneys fees incurred as part of the City Hall litigation, the litigation related to the main fire station and for legal expenses associated with an existing claim related to the recycled water pipeline contract. Of the total amount requested, \$200,000 should be appropriated from RDA undesignated reserve funds and \$50,000 should be appropriated from non-departmental contingent reserved fund.

RECOMMENDATION: Approve a budget transfer to add \$250,000 to the City Attorney's Department budget for Fiscal Year 2003-2004 for public works/claims litigation expenses with funding of \$200,000 from the Redevelopment Agency undesignated reserve and \$50,000 from the non-departmental contingent reserve fund, and approve two purchase orders to Meyers Nave in the amounts of \$200,000 and \$50,000 for public works related litigation.

RA9. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

1. **ADOPT RESOLUTION SUPPORTING A STATEWIDE BALLOT INITIATIVE ENTITLED *LOCAL TAXPAYERS AND PUBLIC SAFETY PROTECTION* TO REQUIRE VOTER APPROVAL BEFORE THE STATE GOVERNMENT MAY TAKE LOCAL TAX FUNDS: MAYOR ESTEVES**

BACKGROUND: The League of California Cities has joined forces with the California State Association of Counties (CSAC) and the California Special Districts Association (CSDA) to sponsor a ballot initiative in November 2004, entitled the *Local Taxpayers and Public Safety Protection Act*, to put the voters in charge of whether local tax dollars should be used to fund state services. It will not raise taxes, repeal laws the state has already passed, require the return of property taxes already taken, nor affect funding of schools, and it will not prevent structural reform of the fiscal system – it will simply require that structural changes be planned collaboratively by state and local leaders and approved by the voters.

The initiative will do two simple things:

- Public Vote Required: Require approval by a majority of the electorate before a proposed state law may take effect that reduces the sales, property, and VLF funds of cities, counties, and special district. Flexibility is provided to reduce the VLF and replace it with substitute revenues (i.e., a “backfill”) without voter approval; **and**
- Reimburse for Mandated Costs: Clarify the state’s duty to reimburse in a timely way for a new mandated program or higher level of service, protecting local governments from hidden cost shifts. Allows local governments to opt-out of certain non-workplace safety and employee procedural rights mandates if the state fails to pay in a timely way.

Mayor Esteves is asking the Council to adopt a resolution supporting the ballot initiative. A draft resolution is included in the Council’s agenda packet

RECOMMENDATION: Adopt Resolution supporting a Statewide Ballot Initiative entitled the *Local Taxpayers and Public Safety Protection Act* to require voter approval before the State Government may take local tax funds, and direct the City Clerk to send a copy to the League of California Cities.

*2. **APPROVE THE MAYOR'S APPOINTMENTS AND REAPPOINTMENT TO THE COMMUNITY ADVISORY COMMISSION AND SISTER CITIES COMMISSION: MAYOR ESTEVES**

BACKGROUND: Mayor Esteves is recommending the following appointments and reappointment:

Community Advisory Commission

Reappoint Sudhir Mandal to a new four-year term expiring January 2008;
Appoint Craig Ranker (from Alternate 1) to a regular position for a term expiring January 2008 (resignation of Al Garcia);
Appoint Chris Lee (from Alternate 2) to a regular position for a term expiring January 2008 (Guadalupe Ortiz, Jr. term expiration);

Appoint Nestor Luna (from Alternate 3) to a regular position for a term expiring January 2006 (Sam Robinson resignation);
Move Jenifer Lind from Alternate 4 to Alternate 1 (term expiring January 2005);
Appoint Danny Fang to Alternate 2 (term expiring January 2006); and
Appoint Michael Queenan to Alternate 3 (term expiring January 2006).

Sister Cities Commission

Appoint Linda Downey (from Alternate 1) to a regular position for a term expiring September 2004 (resignation of Jenifer Lind)
Move Roselda Mateo from Alternate 2 to Alternate 1 (term expiring September 2004);
and
Appoint Massoud Arefi to Alternate 2 (term expiring September 2005).

Included in the Council's agenda packet are copies of current applications for these commissions.

RECOMMENDATION: Approve the Mayor's appointments and reappointment.

3. DISCUSS A PERMANENT DEDICATION TO HONOR DR. MARTIN LUTHER KING, JR.: COUNCILMEMBER LIVENGOD

BACKGROUND: At the January 20, 2004, City Council meeting, Councilmember Livengood requested an item on a future Council agenda to discuss naming a City facility or City street in honor of Dr. Martin Luther King, Jr. This item has been placed on the agenda to provide an opportunity for the Council to discuss various possibilities for an appropriate permanent dedication to recognize Dr. King and to provide direction to staff.

RECOMMENDATION: Discuss options and direct staff accordingly.

Parks, Recreation and Cultural Resources Commission

***4. APPROVE THE PROPOSED CHANGES TO THE FAMILY CHILD CARE ASSISTANCE FUND POLICIES AND PROCEDURES (STAFF CONTACT: TOBY LIBRANDE, 586-3203)**

BACKGROUND: The purpose of the Milpitas Family Child Care Assistance Fund is to increase program quality in Milpitas Family Child Care Homes. Since its inception in 1996, the only policy changes to the program have been monetary in nature. The fiscal year budget has grown from the pilot program funding level of \$2,500 to the current 2003/2004 fiscal year funding level of \$4,000, and the individual grant limit amount has increased from \$250 to \$500 per applicant per year.

Current trends and feedback received from grantees (regarding both the content of the policies as well as the steps in the process), prompted staff to begin a policies and procedures review of the Family Child Care Assistance Fund. Staff identified four desired outcomes to updating the Family Child Care Assistance Fund policies and procedures:

1. To align the funding priorities with current county, state, and federal priorities;
2. To clarify the language of the document to be more reader-friendly;
3. To reorganize the details of the eligibility requirements, funding priorities, fiscal limits and application process, and
4. To address possible provider licensing issues and outline the procedure for funds recovery.

Staff utilized the above desired outcomes to guide the Family Child Care Assistance Fund program update. Overall changes to the program include restructuring the format of the document, streamlining the eligibility requirements, and detailing funding priorities. Included in the Council's agenda packet are the itemized changes to the program detailed in a memorandum

dated January 21, 2004, subject: Changes to the Family Child Care Assistance Fund Policies and Procedures.

Following the initial draft of the new policies and procedures, staff forwarded the proposed changes to the City Attorney for a comprehensive review. The City Attorney reviewed all of the changes. In his response, the City Attorney indicated that the proposed changes complement state law. In addition, the City Attorney suggested specific language regarding funds recovery be included. Staff incorporated this language into the Fiscal Limits and Conditions, Items 3 and 4.

At its December 8, 2003, meeting, the Parks, Recreation and Cultural Resources Commission (PRCRC) reviewed the proposed changes. The Commissioners discussed the draft proposal and voted to table the discussion until the January 5, 2004, meeting. At the January meeting, the Commission approved for City Council to review the draft policy document with staff's proposed changes and the addition of one new eligibility requirement. The PRCRC recommended that individuals shall be eligible for funding for a maximum of three consecutive years, effective fiscal year 2004/2005. Providers caring for special needs children shall be exempt from this requirement.

Included in the Council's agenda packet are five items for review: 1) memorandum dated January 21, 2004, detailing specific program changes, 2) current program policies, 3) draft program policies, 4) comprehensive grantee funding list, and 5) email grant program review from Mr. Peter Spoerl, City Attorney.

RECOMMENDATION: Approve the proposed changes to the Family Child Care Assistance Fund policies and procedures to be effective July 1, 2004.

XV. UNFINISHED BUSINESS (None)

XVI. NEW BUSINESS

***5. ACCEPT GRANT OF EQUIPMENT FROM TROPOS NETWORKS, INC. (STAFF CONTACT: BILL MARION, 586-2701)**

BACKGROUND: Tropos Networks, Inc. has offered the City a grant of equipment and services as part of a demonstration program for wireless technology in Public Safety. Of its existing clients, Tropos selected the City of Milpitas and the City of North Miami Beach, Florida to receive grants of equipment. Milpitas was selected due to the advanced technology presently installed in Police vehicles and the City's demonstrated ability to implement new technology. Currently, the City has implemented a wireless network of approximately 2 square miles and further expansion was planned as part of the overall Public Safety project. Acceptance of this grant will allow the City to greatly expand the coverage of high-speed wireless network at a reduced cost. In return for acceptance of this grant, the City agrees to be the subject of a case study and act as a reference for other agencies interested in wireless technology. The equipment, software, and services provided by Tropos is valued at \$85, 642.

RECOMMENDATION: Authorize the City Manager to execute an agreement with the Tropos Networks, Inc. for a grant of networking equipment, subject to approval as to form by the City Attorney.

***6. APPROVE REQUEST TO THE SANTA CLARA COUNTY PARTNERSHIP FOR SCHOOL READINESS (STAFF CONTACT: TOBY LIBRADE, 586-3203)**

BACKGROUND: Staff received a letter dated November 7, 2003, from The Santa Clara County Partnership for School Readiness requesting that the City of Milpitas consider contributing \$1,000 to support the Santa Clara County Kindergarten School Readiness Assessment Project.

The Santa Clara County Partnership for School Readiness advances school readiness and success for all children through age eight in the County. This group of regional partners meets monthly under the leadership of Success by Six of United Way and the Health Trust. The David and Lucile Packard Foundation has provided funding support and First 5 Santa Clara County serves as the fiscal agent. To date, the Partnership has overseen a mapping project, defined School Readiness, and is currently preparing to conduct a Santa Clara County School Readiness Assessment Project in the Fall of 2004. This Assessment Project is designed to provide a reliable, reusable benchmark of school readiness in Santa Clara County, and to build ownership for the data with the coalition of Santa Clara County funders. The estimated cost for the assessment is \$131,326.00.

Included in the Council's agenda packet is a memorandum further introducing the Santa Clara County Partnership for School Readiness, outlining the details of the School Readiness Assessment Project, and requesting a \$1,000.00 contribution. By contributing to the Assessment Project, the City of Milpitas will receive access to the data in the reports, an opportunity to compare the City of Milpitas' schools with like Academic Performance Index (API) scored sample schools and continued dialogue regarding best practices for preparing children for school.

RECOMMENDATION: Approve request of \$1000.00 from the Council's Community Promotions Budget to fund the Santa Clara County Partnership for School Readiness to contribute to the Santa Clara County School Readiness Assessment.

***7. APPROVE MARQUEE REQUEST: ANNELL SPENCER (STAFF CONTACT: JENNIFER TAGALOG, 586-3206)**

BACKGROUND: Annell Spencer, who has the Publicity Slot on the Board of Friends of Library, has requested to use the City of Milpitas marquee as follows:

Marquee Request (to be displayed 2/4 - 2/14)
Milpitas Library
Book Sale
Romance & Computer
Feb 14th 10am-4pm

Pursuant to Resolution No. 6310, Facility Use Rules and Regulations, the City Council must approve all exceptions to the marquee policy.

RECOMMENDATION: Approve Annell Spencer's request to use marquee (February 4th - 14th).

XVII. ORDINANCES (None)

XVIII. RESOLUTION

***8. ADOPT RESOLUTION SUMMARILY VACATING A PORTION OF UNNECESSARY LANDSCAPE AND SIDEWALK EASEMENT ALONG THE WEST SIDE OF N. MCCARTHY BOULEVARD (PROJECT NO. 3030) (STAFF CONTACT: MEHDI KHAILA, 586-3328)**

BACKGROUND: A 34-foot wide strip of land along the west side of N. McCarthy Boulevard was dedicated to the City for landscape and sidewalk purposes as part of the McCarthy Ranch development. On March 7, 2000, the City Council approved the zone change from Mixed Use to Industrial Park and adopted new Design and Development Guidelines for McCarthy Ranch. The new guidelines reduced the landscape easement width in this area to 27 feet. Therefore, 7 of the dedicated 34 feet landscape easement is no longer necessary and can be summarily vacated in accordance with the State Street and Highway Code. Utility companies were notified and no objection was received to the proposed vacation.

RECOMMENDATION: Adopt resolution summarily vacating 7 feet of landscape and sidewalk easement along a portion of N. McCarthy Boulevard.

XIX. BIDS AND CONTRACTS

***9. APPROVE BUDGET APPROPRIATION AND AWARD CONSTRUCTION CONTRACT: BERRYESSA CREEK TRAIL, REACH 3 (PROJECT NO. 5074) (STAFF CONTACT: GREG ARMENDARIZ, 586-3220)**

BACKGROUND: This project provides for trail improvements including installation of access points on the Berryessa Creek levee, from Hillview Dr. to Jacklin Road/Abel St. The project will also install a pedestrian bridge over the creek, near the vicinity of Gill Park, to provide access to the town center area. In addition, the Santa Clara Valley Water District will be implementing additional flood control improvements at some point in the future. These trail improvements have been coordinated and designed to accommodate those future flood control improvements.

This project has received a federal grant of \$375,000 and more recently, Santa Clara Valley Water District has granted the City another \$90,000 grant for the construction costs of the pedestrian bridge. The federal grant is included in the approved Capital Improvement Project. The second grant from the Santa Clara Valley Water District was granted after the CIP approval process last year, and therefore was not included in the approved project budget. Staff is recommending approval of a budget appropriation of \$90,000 from the Park Fund to cover the reimbursement grant.

On December 16, 2003, the City Council approved plans and specifications for Berryessa Creek Trail, Reach 3 and authorized advertising for bids. The project was advertised and sealed proposals were opened on January 28, 2004. A total of nine bids were received, ranging from \$534,700 to \$896,265. The Engineer's estimate was \$585,000. The apparent low bid was received from Bugler Construction. A copy of the bid results is included in the Council's agenda packet.

The Federal grant for the project requires a portion of the work to be provided by a "Disadvantaged Business Enterprise" (DBE) firm. Bidders are to provide special certifications and meet specific requirements, including information on the DBE requirements. The low bidders' DBE submittals are due on February 3, 2004, as allowed by the Contract. Staff will review the DBE submittals to determine conformance with federal and contract requirements.

The City needs to award this contract by February 20, 2004, to meet the Federal grant deadline. Because staff will not be able to determine prior to the Council meeting whether the low bidder has met its DBE obligations, staff recommends that the City Council award the construction contract to the lowest responsive bidder conditioned upon staff determining the bidder has met the DBE requirements. Staff further recommends that if the lowest bidder has not met the DBE requirements, the Council authorize award of the contract to the next lowest responsive bidder who has met the DBE requirements, with the condition that the bidder's bid is below the project budget. Sufficient funds are available in the project budget.

RECOMMENDATION:

1. Approve a budget appropriation of \$90,000 from the Park Fund.
2. Award construction contract for Berryessa Creek Trail, Reach 3 (Project No. 5074) to Bugler Construction, conditioned upon Staff confirming that Bugler Construction has met the federally-mandated DBE requirements. If Bugler Construction has not met the DBE requirements, the construction contract shall be awarded to the next lowest responsive bidder who has met the DBE requirements, and whose bid is below the project budget.

***10. APPROVE PERMITTEE DEDICATION AND IMPROVEMENT AGREEMENT WITH EDESEL COURT APARTMENTS (PROJECT NO. 2295) (STAFF CONTACT: MEHDI KHAJALA, 586-3328)**

BACKGROUND: On December 17, 2002, the City Council approved the construction of 6 new apartment units in conjunction with the renovation of 4 existing apartment buildings at 1129 and 1143 Edsel Drive and 1116 and 1124 Shirley Drive.

Edsel Court Apartments (Permittee) is required to execute a secured public improvement agreement with the City to dedicate necessary public service utility easement and construct all necessary public improvements within Edsel Drive, Shirley Drive, and the proposed public service utility easement.

RECOMMENDATION: Approve the Permittee Dedication and Improvement Agreement and authorize the City Manager to execute the same, subject to the approval as to form by the City Attorney.

XX. CLAIMS AND DEMANDS

***11. APPROVE PAYMENT REQUESTS: MISCELLANEOUS VENDORS / CONTRACTORS (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: In accordance with direction given by City Council at its August 15, 1995, meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$5,538.65 to Stewart & Stevenson for emergency transmission repair and motor mount replacements on Fire Engine No. 3 for the Fleet Maintenance Division. (Funds are available from the Public Works Department operating budget for these services.)
2. \$17,244.80 to Target Specialty Products for the purchase of systemic insecticides to provide annual control of aphids on Modesto Ash and other susceptible street trees for the Tree and Landscape Maintenance Division. (Funds are available from the Public Works Department operating budget for this purchase.)
3. \$11,625.04 to National Energy Foundation for the purchase of water efficiency educational program material kits for teaching 5th grade students at five schools the water wise program for the Utility Engineering Division. (Funds are available from the Engineering Department operating budget for this purchase.)
4. \$5,000.00 to Alliance Occupational Medicine, Inc. to provide new hire medical exams and tests, vaccines, and minor medical needs of existing staff. (Funds are available from the Human Resources Department operating budget for these services.)
5. \$5,071.62 to Milpitas Printing for the printing of two sided, four color door hangers outlining the odor complaint process per the City's Odor Outreach Plan for the Utility Engineering Division. (Funds are available from the Engineering Department operating budget for this purchase.)

RECOMMENDATION: Approve the purchase requests.

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, FEBRUARY 17, 2004, AT 7:00 P.M.**

**CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
January 20, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard**

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

1. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

(Pursuant to Government Code Section 54957)

Title: City Manager

2. CONFERENCE WITH LABOR NEGOTIATOR

(Pursuant to Government Code Section 54957.6)

Unrepresented Employee: City Manager

3. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: APN Nos. 86-12-015, 86-12-016, and 86-12-020

Negotiating Party: Milpitas Redevelopment Agency

Under Negotiation: Terms and Conditions for Acquisition of Property

4. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Pursuant to Government Code Section 54956.9[a])

Title: Milpitas v. Turner Construction et al.

Santa Clara County Superior Court Case No. CV008400

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES: January 6, 2004

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

Commendations:

- Paul Anthony Espinoza, Eagle Scout
- Don Ryan, Lion of the Year
- Carmen Montano, recipient of the 2004 Good Neighbor Award by Dr. Martin Luther King, Jr., Association of Santa Clara County
- Alice Elizabeth Merritt, recipient of the 2004 Good Neighbor Award by Dr. Martin Luther King, Jr., Association of Santa Clara County
- Dr. Martin Luther King, Jr., Association of Santa Clara County, contributions to the community

Proclamation:

- Dr. Martin Luther King, Jr., Day

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. APPROVAL OF AGENDA

XI. CONSENT CALENDAR (Items with Asterisks)

XII. PUBLIC HEARINGS

1. **Weed Abatement Hearing and Adoption of Resolution Ordering Abatement Program (Staff Contact: Patti Joki, 586-3370)**
2. **Approve Appropriation and Budget Change From: 2003 Citizen Options for Public Safety Grant (COPS): (Staff Contact: Dennis Graham, 586-2400)**

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: January 6, 2004

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

***RA5. Review Progress Report on Project Closeout: Approve Release of Retention: Civic Center (Project No. 8026) (Staff Contact: Greg Armendariz, 586-3220)**

RA6. Approve Budget Appropriations and Transfers for FY 03-04 Mid-Year Budget Modifications (Staff Contact: Emma Karlen, 586-3145)

RA7. City of Milpitas Financial Status Report For The Six Months Ended December 31, 2003 (Staff Contact: Emma Karlen, 586-3145)

RA8. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS (None)

XV. UNFINISHED BUSINESS

- *3. Odor Control Comprehensive Action Plan Update (Staff Contact: Darryl Wong, 586-3345)**

XVI. NEW BUSINESS

- *4. Approve Mid-Year Review of Spay/Neuter Voucher Program (Staff Contact: Felix Reliford, 586-3071)**
- *5. Adopt Updated Bikeway Master Plan (Staff Contact: Janice Nadal, 586-3291)**
- *6. Approve Marquee Request: Marilyn Hay (Staff Contact: Jennifer Tagalog, 586-3206)**
- *7. Approve Milpitas Relay for Life Request for Fee Waiver and In-Kind Donation of Equipment, Supplies, and Staffing for the 2004 Relay for Life Event at the Milpitas Sports Center (Staff Contact: Kerrilyn Ely, 586-3231)**

XVII. ORDINANCES (None)

XVIII. RESOLUTIONS

- *8. Designate 2002 Park Bond (Proposition 40) Funds for Athletic Court Rehabilitation and Adopt Resolutions Authorizing Grant Applications (Staff Contact: Blair King, 586-3060)**
- *9. Adopt Resolution Authorizing Execution of the Program Supplemental Agreement No. M 001 to Administering Agency-State Agreement No. 04-5314 for Berryessa Creek Trail, Reach 3 (Project No. 5074) (Staff Contact: Carol Randisi, 586-2601)**
- *10. Adopt Resolution Granting Initial Acceptance: SBWR M-2/M-3 (Project No. 6093) (Staff Contact: Joe Ezeokeke, 586-3316)**

XIX. BIDS AND CONTRACTS

- 11. Approve Consultant Agreement with Thomas Shanks Consulting to Prepare and Implement an Ethics Program, Including Training for City Council Candidates, Elected Officials, Commissioners, and Senior Management Staff (Staff Contacts: Tambri Heyden, 586-3280 and Steve Mattas, 586-3040)**
- *12. Approve Agreement Amendment and Budget Appropriation: Carollo Engineers, Well Upgrade Project (Project No. 7076) (Staff Contact: Steve Erickson, 586-3317)**
- *13. Approve Agreement to Provide Technical Consulting Services to the Central Contra Costa Sanitary District (Staff Contact: Bill Marion, 586-2701)**
- *14. Approve Agreement with Towill Inc. for Update of the City Aerial Orthophoto (Staff Contact: Bill Marion, 586-2701)**

XX. CLAIMS AND DEMANDS (None)

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, FEBRUARY 3, 2004, AT 7:00 P.M.**

**CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
January 20, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard**

XII. PUBLIC HEARINGS

1. WEED ABATEMENT HEARING AND ADOPTION OF RESOLUTION ORDERING ABATEMENT PROGRAM (STAFF CONTACT: PATTI JOKI, 586-3370)

BACKGROUND: At its meeting of December 16, 2003, the Council adopted Resolution No. 7371 declaring weeds on certain described properties to be a public nuisance and setting a public hearing for January 20, 2004. A copy of Resolution No. 7371 was forwarded to the Santa Clara County Fire Marshal. A notice of Public Hearing was subsequently published and property owners were mailed a notice of the proposed abatement by the Santa Clara County Fire Marshal. The purpose of the public hearing is for property owners who object to the removal of the weeds to state their objections before the weeds are removed and the costs made a lien upon the property. A list of properties to be abated is included in the Council's agenda packet along with a resolution directing the County Fire Marshal to abate the weeds.

RECOMMENDATION:

1. Close the public hearing.
2. Adopt resolution ordering the County Fire Marshal to abate the nuisance, keep an account of the cost, and embody such account in a report and assessment list to the City Council in accordance with the Milpitas Municipal Code.

2. APPROVE APPROPRIATION AND BUDGET CHANGE FROM: 2003 CITIZEN OPTIONS FOR PUBLIC SAFETY GRANT (COPS): (STAFF CONTACT: DENNIS GRAHAM, 586-2400)

BACKGROUND: The California State Legislature awarded \$100,000 to the City of Milpitas through the Citizen Options for Public Safety Grant (COPS). No city matching funds are required.

Government Code 30061 specifies that these funds must be used for front line municipal services and must supplement and not supplant existing funding for front line municipal services. These funds shall be appropriated pursuant to a written request from the Chief of Police of the law enforcement agency that provides police services for that city. The request shall indicate the front line law enforcement needs of the requesting entity including the personnel and equipment that are necessary to meet those needs.

The police staff is requesting that the designated funds be used to purchase:
New Tasers to replace obsolete Tasers; Eo Tech sites (to improve accuracy) and shoulder slings (for easier handling) for AR15 rifles; multi-channel digital video recorder to record traffic events and criminal activity at 17 major intersections; Skytrack software to improve the capability of the Investigations Unit's GPS tracking device; microphone kit for packets to improve radio transmissions and officer safety; moving radar for traffic car; night vision monocular to enhance nighttime searches; event recorder software to retrieve accident data from airbags; Kevlar gloves for cut and slash protection; crowd control bags for gas masks and filters; digital recorders for field use by detectives; 3 Motorola packets for Communications for evacuation scenarios and tactical dispatching; shirts, jackets and vests for evidence technicians during intense crime scene evidence collection; thermal imaging to help detect suspicious persons, vehicles and objects

during darkness; 15 lockers to provide additional storage of anti-terrorist protective equipment and other gear; and a sensor system to detect motion inside buildings during hostage or barricaded suspect situations.

RECOMMENDATION: Approve appropriation in the amount of \$100,000 into the police operating budget.

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: January 6, 2004

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

***RA5. REVIEW PROGRESS REPORT ON PROJECT CLOSEOUT: APPROVE RELEASE OF RETENTION: CIVIC CENTER (PROJECT NO. 8026) (STAFF CONTACT: GREG ARMENDARIZ, 586-3220)**

BACKGROUND: Royal Glass has a minor punchlist item and a warranty item outstanding. Royal has requested release of a portion of its contract retention. Staff recommends release of \$30,000 of retention, which leaves the City with \$20,000, remaining as a contract retention. This final retention will not be released until Royal completes the two work items and the Council approves initial acceptance of the contract.

The current project contingency remains at \$87,145. Included in the Council's agenda packet is a budget report prepared by the Finance department.

RECOMMENDATION: Approve release of retention in the amount of \$30,000.

RA6. APPROVE BUDGET APPROPRIATIONS AND TRANSFERS FOR FY 03-04 MID-YEAR BUDGET MODIFICATIONS (STAFF CONTACT: EMMA KARLEN, 586-3145)

BACKGROUND: To maintain conformity with the City's current budget policies that any additional appropriation to a department budget or reappropriation of monies from one fund to another must be approved by the City Council, staff has included in the Council's agenda packet the budget change form and justification memoranda from the departments for the Council's review and consideration. These modifications are requested due to changing conditions or needs, the amounts originally appropriated in the requesting department, or project budget were inadequate.

The overall fiscal impact of these budget modifications will be \$28,090,017 net reduction to the fund balances of various funds, including a reduction of \$23,193 to the General Fund unreserved, undesignated fund balance. There are sufficient balances in these funds to cover the additional appropriations. A summary of the various budget transfers and appropriations is also included. Necessary budget adjustments include the following categories:

Budget transfers between funds: \$5,974,670 is requested to be transferred from the RDA Project fund to the Housing Reserve Fund. This amount represents the Housing Fund portion of the 1997 Redevelopment Agency Tax Allocation Bond proceeds. This portion of the bond proceeds should have been recorded in the Housing Reserve Fund for better accounting and interest income allocation.

Additional budget appropriations to cover expenditures:

1. \$23,193 to Human Resources Department from the General Fund unreserved, undesignated fund balance to cover increased user fee for self-insured employers from the Department of Industrial Relations (Workers Compensation).
2. \$40,000 to Planning Department for contractual services to cover design review referrals for new development. The contractual service fees are 100% recoverable from revenue generated from the Private Job accounts.
3. \$300,000 to Finance Department RDA budget from the Redevelopment Project Fund (\$200,000) and Housing Reserve Fund (\$100,000) respectively to cover additional redevelopment and housing related consultant fees.
4. \$1,823,480 to Non-Departmental RDA Budget from the Housing Reserve Fund to pay for developer grant in accordance with an Owner Participation Agreement.
5. \$1,949,744 to Non-Departmental RDA Budget from the Redevelopment Agency Project Fund to be transferred to the Education Revenue Augmentation Fund (ERAF), a State mandated obligation.
6. \$24,000,000 to Non-Departmental RDA Budget from the 2003 Redevelopment Agency Tax Allocation Bond Fund for the purchase of Elmwood property.
7. \$40,800 to Capital Project No. 4133, Traffic Signal Modification for the installation of energy-efficient LED bulbs in traffic signals. The funding source for the appropriation is from a reimbursement grant received from the California Energy Commission.
8. \$1,568,000 to Capital Project No. 4179, Montague Expressway Widening at Great Mall Parkway. The funding source is from a developer fund received through the City of San Jose.
9. \$80,000 to Capital Project No. 8137, City Gateway Identification signs to re-open project that was closed prematurely. The original funding source was from Redevelopment Project fund.
10. \$25,000 to create new Capital Project No. 8156, Police Department Community Room to improve the acoustics. The funding source is from Redevelopment Project Fund.

Monies returned to Fund balances:

1. \$10,576 from Capital Improvement Project No. 7096, Financial Utility Master Plan to the original funding sources of Water and Sewer CIP funds, due to completion of project.
2. \$100,824 from Capital Project No. 4208, Calaveras – Piedmont- Evans Intersection Improvements to the original funding source of Street CIP Fund. Due to receipt of a State Transportation Development Act Grant, Street Fund contribution could be reduced.

RECOMMENDATION:

1. Approve the Fiscal Year 2003-04 mid-year budget transfers and appropriations as itemized in the budget change form included in the Agency/Council's agenda packet.
2. Adopt Resolutions to amend Resolution 1626, the Classification Plan.

RA7. CITY OF MILPITAS FINANCIAL STATUS REPORT FOR THE SIX MONTHS ENDED DECEMBER 31, 2003 (STAFF CONTACT: EMMA KARLEN, 586-3145)

BACKGROUND: The Finance Department will present a review of the City's financial status for the six months ended December 31, 2003.

RECOMMENDATION Note receipt and file.

RA8. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS (None)

XV. UNFINISHED BUSINESS

***3. ODOR CONTROL COMPREHENSIVE ACTION PLAN UPDATE (STAFF CONTACT: DARRYL WONG, 586-3345)**

BACKGROUND: This is an update of the odor control coordination activities. Some of the key events that have occurred during the past month include:

1. Revised outreach plan to include distribution of odor complaint guidelines to residents in the northern part of the City initially and throughout the City next summer.
2. "Beta testing" of rapid notification pilot program has been implemented to provide real time advisories of odor events to City staff and Local Enforcement Agency (LEA).
3. Staff and the City Attorney have begun analyzing potential legislative changes to make regulation of odor emanating from composting facilities more effective. In conjunction with this activity, the City Attorney has reviewed the legislative history of the bills that led to the current regulatory structure.
4. Coordinated with the LEA and BFI to accelerate implementation of best management practices to include relocation of compost processing facilities.
5. Requested, received and begun review of professional odor control advisory services proposals.

The Bay Area Air Quality Management District (BAAQMD) has reported the following number of complaints logged in October: 96, November: 50, December: 16. A draft odor control action plan is included in the Council's agenda packet.

RECOMMENDATION: Note receipt and file progress report.

XVI. NEW BUSINESS

***4. APPROVE MID-YEAR REVIEW OF SPAY/NEUTER VOUCHER PROGRAM (STAFF CONTACT: FELIX RELIFORD, 586-3071)**

BACKGROUND: At its June 3, 2003 meeting, the City Council reduced the FY 2003-2004 funding for the Spay/Neuter Program from \$40,000 to \$20,000 and directed staff to report back mid-year to determine the potential impacts from the cost reduction. At the meeting, the Council also increased the voucher fee from \$5.00 to \$30.00 to help offset the cost of the program. The fee increase was the first in the program since its 1997 inception and was similar to what other cities and counties were charging their residents for spay/neuter services.

At this mid-point in the fiscal year, total Spay/Neuter Program expenditures are \$16,000 with \$4,000 remaining for the fiscal year. A six-month assessment of the program since the budget reduction and fee increase are as follows:

- From July 1, 2002 to December 31, 2002, staff issued 517 spay/neuter vouchers as compared to 540 vouchers issued during July 1, 2003-December 31, 2003;
- The fee increase from \$5.00 to \$30.00 has helped to defray some of the cost (20%) to the city for the spay/neuter program, but as anticipated, does not offset the total cost of the funding reduction;

- City staff and the City of San Jose Animal Care and Service Division which provides contractual animal care services to the City has not experienced an increase in the number of complaints from residents regarding stray animals in their neighborhoods;
- The cost for spay/neuter veterinarian services for dogs remains substantially more expensive than for cats; and
- Numerous residents over the years have obtained as many as 15 to 20 vouchers each year to spay/neuter stray animals in their neighborhoods. While the number of vouchers issued to the same resident has assisted the city in keeping the animal population down, it more quickly exhausts funds and limits the number of vouchers available to other residents.

Staff recommends the following proposed adjustments to the program:

- Limiting the number of vouchers per household to three (3) within the program year. Approximately 35% of all vouchers are issued to residents requesting 5 or more vouchers. This limits the number of residents that are able to participate in the program.
- Maintain the current level of funding for the program. Once the funding is expended, residents would be responsible for the cost to spay/neuter their animals until the next program year. Several cities and counties have taken this approach in limiting the number of vouchers issues from previously years.

The City of San Jose's new Animal Shelter Facility on Monterey Road is planned to open Spring of 2004. Part of the Milpitas contractual agreement with the City of San Jose will be to provide sheltering and medical services for Milpitas animals. The Santa Clara Valley Humane Society will be opening their services (adoption agency only) in Milpitas in the future. Staff anticipates that once these services become available to Milpitas residents, the number of vouchers issued by the City may be slightly reduced, since both agencies are anticipated to provide spay/neuter services on-site.

RECOMMENDATION:

1. Maintain the existing funding for the Spay/Neuter Voucher Program.
2. Limit the number of vouchers issued to City households to three within the program year.

***5. ADOPT UPDATED BIKEWAY MASTER PLAN (STAFF CONTACT: JANICE NADAL, 586-3291)**

BACKGROUND: At the December 8, 2003 Bicycle Transportation Advisory Commission (BTAC), the Commission reviewed the update to the Bicycle Master Plan. The update includes specific goals relating to promoting alternative modes of transportation. The revised Plan will also be re-submitted to Caltrans for certification that it continues to meet the criteria established in the Streets and Highway Code. Regional certification for the City's Bikeway Master Plan satisfies an eligibility requirement when seeking state Bicycle Lane Account funds for public improvements. The Commission endorsed the updated plan with map and recommends City Council approval.

RECOMMENDATION: Approve the update to the Bikeway Master Plan as recommended by the Bicycle Transportation Advisory Commission.

***6. APPROVE MARQUEE REQUEST: MARILYN HAY (STAFF CONTACT: JENNIFER TAGALOG, 586-3206)**

BACKGROUND: Marilyn Hay, Library Advisory Commission Chair, has requested to use the City of Milpitas marquee as follows:

Marquee Request No. 1 (to be displayed 1/21 - 2/6)

MHS Academies
Silent Auction
February 6th
Info (408) 263-1935

Marquee Request No. 2 (to be displayed 1/21 - 3/2)

Remember to Vote
On March 2nd

Pursuant to Resolution No. 6310, Facility Use Rules and Regulations, the City Council must approve all exceptions to the Marquee Policy.

RECOMMENDATION: Approve Marilyn Hay's request to use Marquee Request No. 1 (January 21st - February 6th) and Marquee Request No. 2 (January 21st - March 2nd).

***7. APPROVE MILPITAS RELAY FOR LIFE REQUEST FOR FEE WAIVER AND IN-KIND DONATION OF EQUIPMENT, SUPPLIES, AND STAFFING FOR THE 2004 RELAY FOR LIFE EVENT AT THE MILPITAS SPORTS CENTER (STAFF CONTACT: KERRILYN ELY, 586-3231)**

BACKGROUND: For the past four years, the American Cancer Society, with the volunteer support of numerous Milpitas community members and businesses, has hosted the annual Relay for Life fundraising event at the Milpitas Sports Center.

The City of Milpitas has a long history of supporting this annual event with services, staff support and equipment on varying levels. In an effort to improve event organization and ensure clear communication between the City of Milpitas and the American Cancer Society, the Relay for Life representative has provided staff a complete list of requested items for waiver or donation for the City Council to consider for approval.

Relay for Life is requesting that City Council approve the waiver or donation of the following (staff has provided estimated costs associated with each requested item):

RECREATION SERVICES:

• Use of Football Field - June 25 to June 26	\$1,275.00
\$150.00 deposit	
\$ 960.00 rental fees (48hours @ \$20.00 per hour)	
\$15.00 application fee	
• Use of white event fencing for Kids Camp area	\$ no cost
(Volunteers pickup, set-up and return)	
• Use of Mobile Stage	\$ 970.00
\$700.00 (2 days @ 350.00per day)	
\$70.00 in part-time staff time (5 hrs @\$15.00)	
\$200.00 Towing (\$100 each way)	
• Use of two EZ –Up shade structures	<u>\$ no cost</u>
(Volunteers pickup, set-up and return)	
TOTAL RECREATION SERVICES COST	\$ 2,245.00

PARK SERVICES

- Use of Football Public Address system
- Trash cans/ Garbage cans
- Field Prep and track dragging for event
- Water / irrigation turned off during event
- Restrooms opened and secured as needed
- Weekend Crew point of contact during the event
- Use of sand for luminaries
- Use of two John Deere tractors

TOTAL PARK SERVICES COST

\$600.00

FIRE DEPARTMENT

- Fire site/ event inspection \$204.00
- Site Plan and Review
- Provision of First Aid by Fire Aids during event \$ No cost
- Provide Safe House towing and fuel \$50.00
- Volunteer Fire Aids \$ No cost
- Use of four MFD generators \$ No cost
- Picked up and delivered by volunteers
- Community Fire Aides supplies, food \$250.00
- Two Emergency Medical Technicians \$ No cost

TOTAL FIRE DEPARTMENT COST

\$504.00

POLICE DEPARTMENT

- Officers to escort revenues during event
- Police Command RV for banking
- Use of two 10x 20 canopies

TOTAL POLICE DEPARTMENT COST

\$300.00

TOTAL AMOUNT REQUESTED

BY AMERICAN CANCER SOCIETY

\$3,649.00

RECOMMENDATION: Approve the Milpitas Relay for Life request for fee waiver totaling \$3,649.00 from various City departments, including in-kind donation of equipment, supplies, and staffing for the June 25-26, 2004, Relay for Life event at the Milpitas Sports Center.

XVII. ORDINANCES (None)

XVIII. RESOLUTIONS

***8. DESIGNATE 2002 PARK BOND (PROPOSITION 40) FUNDS FOR ATHLETIC COURT REHABILITATION AND ADOPT RESOLUTIONS AUTHORIZING GRANT APPLICATIONS (STAFF CONTACT: BLAIR KING, 586-3060)**

BACKGROUND: The City of Milpitas has \$453,761 available for park improvements from the 2002 Resources Bond Act (Proposition 40). The Council was initially advised of the pending availability of these funds in August 2002, when it was asked to allocate funds under the 2000 Park Bond (Proposition 20). At that time, the Council considered a ranked list of potential projects and directed that the 2000 Park Bond funds be spent on the highest rated need, the rehabilitation of playground equipment and improved handicapped access at Hall, Dixon Landing, Foothill, and Pinewood Parks. The second highest priority project was the rehabilitation and resurfacing of outdoor athletic courts, e.g. tennis and basketball courts.

Consistent with the Council's previous consideration, it is now recommended that the Council allocate the 2002 Park Bond funds to the rehabilitation and resurfacing of outdoor athletic courts.

Milpitas has approximately 194,866 sq. ft. (4.47 acres) of athletic court surfaces including tennis, basketball, and handball courts. Athletic courts at Pinewood, Gill, and Dixon Landing Parks have recently been resurfaced. Courts at Hall, Yellowstone, and Calle Oriente Parks need rehabilitation and repair. Assessments by staff and the public indicate these surfaces are in poor condition and some courts may require reconstruction. Like road surfaces, the cost to rehabilitate athletic court surfaces increase with time. Expending a relatively smaller amount of money now achieves the same results as spending a greater amount of money in the future.

In October 2001, Planning, Recreation, and Public Works staff began to list possible projects for Park Bond expenditures. In total, close to 75 different park and open space needs were listed. Staff considered need, previous efforts, and other available funding sources to develop the following ranking of projects for Park Bond funding: (1) Park Playground Rehabilitation, Safety, and Accessibility; (2) Athletic Court Resurfacing; (3) Off-Leash Dog Park; (4) Alviso Adobe Renovation and Site Improvements; (5) Sports Center; and (6) Trail Program.

If the Council should choose not to use Proposition 40 funds to rehabilitate and resurface athletic courts, staff recommends the rehabilitation of the Cardoza Park playground as an alternative project. Cardoza Park is the last park that still requires playground safety improvements. Currently, it is planned to rehabilitate Cardoza Park as a part of the Sports Center project. If the Sports Center project should be delayed, it is likely that a stand-alone playground safety and handicapped accessibility project for Cardoza Park will be proposed.

On Monday, January 5, 2003, the Parks, Recreation, and Cultural Resources Commission voted unanimously to recommend that the 2002 Park Bond funds be used for an athletic court resurfacing project.

The 2002 Park Bond grants come from two components, the Per Capita Program and the Roberti-Z'berg-Harris (RZH) Block Grant Program. With the passage of AB 1747 in 2003, no match is required for either grant. However, if needed, additional money may be requested from the Park fund in order to achieve a fully funded project.

According to procedural guidelines, the City Council must first adopt resolutions authorizing application for these grant funds. This allows the state to encumber these funds on behalf of the City of Milpitas.

RECOMMENDATION: Designate the use of the 2002 Park Bond funds (Proposition 40) for athletic court rehabilitation and adopt resolutions authorizing the application for grant funds under the Roberti-Z'berg-Harris Block Grant and the Per Capita Grant Program.

***9. ADOPT RESOLUTION AUTHORIZING EXECUTION OF THE PROGRAM SUPPLEMENTAL AGREEMENT NO. M 001 TO ADMINISTERING AGENCY-STATE AGREEMENT NO. 04-5314 FOR BERRYESSA CREEK TRAIL, REACH 3 (PROJECT NO. 5074) (STAFF CONTACT: CAROL RANDISI, 586-2601)**

BACKGROUND: On June 4, 2002, the City of Milpitas entered into Administering Agency-State Agreement No. 04-5314 with the California Department of Transportation to receive Federal Transportation Enhancement Activities (TEA) funds in the amount of \$375,000 for Berryessa Creek Trail, Reach 3 for the construction phase of the project. The City of Milpitas, as the Administering Agency, is required by the California Department of Transportation to authorize execution of the Program Supplement Agreement No. M 001, accept and comply with the Special Covenants or Remarks set forth in the Program Supplement Agreement, and delegate authorization to execute the agreements. Invoices for reimbursement cannot be processed until the agreement is fully executed.

RECOMMENDATION: Adopt resolution authorizing execution of the Program Supplemental Agreement No. M 001 to Administering Agency-State Agreement No. 04-5314, subject to approval as to form by the City Attorney.

***10. ADOPT RESOLUTION GRANTING INITIAL ACCEPTANCE: SBWR M-2/M-3 (PROJECT NO. 6093) (STAFF CONTACT: JOE EZEKEKE, 586-3316)**

BACKGROUND: This project to install reclaimed water lines in Central Milpitas and the area of the Great Mall was awarded to Preston Pipelines, Inc. on November 20, 2001. The City's contractor has completed the project. Therefore, an initial acceptance may be granted and the contractor's faithful performance bond may be reduced to \$ 352,197.71, which is 10% of the contract amount.

RECOMMENDATION: Adopt resolution granting initial acceptance subject to the usual one-year warranty period and reduction of the faithful performance bond to \$ 352,197.71.

XIX. BIDS AND CONTRACTS

11. APPROVE CONSULTANT AGREEMENT WITH THOMAS SHANKS CONSULTING TO PREPARE AND IMPLEMENT AN ETHICS PROGRAM, INCLUDING TRAINING FOR CITY COUNCIL CANDIDATES, ELECTED OFFICIALS, COMMISSIONERS, AND SENIOR MANAGEMENT STAFF (STAFF CONTACTS: TAMBRI HEYDEN, 586-3280 AND STEVE MATTAS, 586-3040)

BACKGROUND: At the September 2, 2003 City Council meeting, the Community Advisory Commission (CAC) presented a recommendation based on one of their 2003 work plan tasks – an analysis of campaign ethics. The CAC's recommendation, which the Council supported, was a) to prepare a code of ethics that would apply to Council candidates, elected officials, commissioners and management staff, and b) to employ the services of a qualified professional to lead ethical conduct workshops for the purpose of code preparation and training. Hence, a request for proposals (RFP) for this work was prepared and release on November 7, 2003 to seven organizations and institutions believed to specialize in this type of work.

Dr. Shanks, a professor at Santa Clara University and an ethics consultant with his own, one-person firm submitted a proposal. It was the only response received in response to the city's RFP. A team of staff that included a CAC representative, scored the proposal, conducted an interview with Dr. Shanks, and performed reference checks. Also, the team contacted those groups that received the RFP, but did not respond, to learn that they either could not perform this kind of specialized work, or could not perform the work timely enough to meet the city's ambitious deadline. Therefore, on December 16th, staff contacted Dr. Shanks to begin contract negotiations.

Included in the Council's agenda packet is a draft contract that has resulted from those negotiations and contains a scope of work (Exhibit A) and schedule (Exhibit B). The highlights of the scope include code preparation that will begin in March 2004, after conducting a stakeholder report and awareness survey, and will be completed in May 2004. To ensure that campaign candidates are trained well in advance of the November 2004 election, training will be phased and tailored to the two types of group. The first phase is a series of campaign ethics workshops to be held between June and August 2004, prior to the election, for campaign candidates, their staff and interested volunteers and citizens. The second phase is a series of ethics code workshops held after the election, during November and December 2004, for elected officials, commissioners, and senior management staff. As an alternative to implementing an enforcement mechanism, a post-election assessment meeting will be convened, after which the

consultant's final task – a final report will be due the end of January 2005. The total cost of this project is an amount not to exceed \$21,960.

The scope of work and schedule have been reviewed by the CAC at their January 7, 2004 meeting. The CAC recommends approval of the scope and schedule and further requests to be represented on the steering committee that will be formed to provide guidance to the City staff project manager(s). Additional CAC monitoring of the contract will occur through regular updates at their monthly meetings.

RECOMMENDATION: Authorize the City Manager to execute the consultant agreement with Tom Shanks Consulting in an amount not to exceed \$21, 960.

***12. APPROVE AGREEMENT AMENDMENT AND BUDGET APPROPRIATION:
CAROLLO ENGINEERS, WELL UPGRADE PROJECT (PROJECT NO. 7076)
(STAFF CONTACT: STEVE ERICKSON, 586-3317)**

BACKGROUND: On November 4, 1997, the City Council approved an agreement with Carollo Engineers to provide design services for the subject project. This project will construct a new potable water supply well for the purpose of supplying water in combination with the existing Pinewood Well in times of emergency. The new well will be located at the end of East Curtis Avenue within the City Park to be constructed by the Parc Metropolitan development.

The Valley Transportation Authority (VTA) requested that Milpitas revise the project due to a location conflict with the conceptual plan for the extension of BART. The VTA has agreed to reimburse the City for the cost to redesign the location of the well and well building not-to-exceed \$140,000. A budget appropriation for this change is necessary.

Staff also recommends this project include provisions to monitor and pace well water flows entering the City water distribution system in order to better monitor and adjust for water quality. This monitoring and pace system has been requested by the Department of Health Services as a condition of permit issuance for operation of the well.

An agreement amendment is proposed with the City's design consultant for these additional services. The fee for these additional design services is not-to-exceed \$185,000.00, which is considered reasonable for the work involved. Funds are available in the project budget.

RECOMMENDATION:

1. Approve agreement amendment with Carollo Engineers in the amount of \$185,000.00, and authorize the City Manager to execute the amendment subject to approval as to form by the City Attorney.
2. Approve budget appropriation of \$140,000 to provide for the VTA requested design change.

***13. APPROVE AGREEMENT TO PROVIDE TECHNICAL CONSULTING SERVICES TO
THE CENTRAL CONTRA COSTA SANITARY DISTRICT (STAFF CONTACT: BILL
MARION, 586-2701)**

BACKGROUND: The City has over the past several years developed considerable expertise in the area of Geographic Information Systems (GIS). Other local government agencies are seeking to develop GIS capabilities and have approached the City for assistance. One such agency is the Central Contra Costa Sanitary District. After reviewing our current capabilities and the requirements provided by the Central Contra Costa Sanitary District, it was determined that City staff could provide the required services. This project involves a pilot conversion of 200 maps with the option for a follow-on conversion project for which the District would pay up to \$15,000 for services.

RECOMMENDATION: Authorize the City Manager to execute an agreement with the Central Contra Costa Sanitary District for the provision technical consulting services, subject to approval as to form by the City Attorney.

***14. APPROVE AGREEMENT WITH TOWILL INC. FOR UPDATE OF THE CITY AERIAL
ORTHOPHOTO (STAFF CONTACT: BILL MARION, 586-2701)**

BACKGROUND: As part of the Geographic Information System (GIS) project, aerial photography of the City was accomplished in 1999. This photography served as the basis for the development of the GIS basemap and other products. The air photo has been invaluable to the City for economic development purposes and has been used by the Planning, Engineering and Building Departments for numerous projects. Since 1999, a number of major development

projects have been completed and the 1999 air photo requires update. Towill Inc., completed the 1999 aerial photography and is able to re-utilize ground survey points and digital terrain models that they developed for the 1999 project. Use of this existing work will result in savings of approximately \$25,000. As projects such as the Mid-Town Plan, Elmwood development, Dixon/Highway 880 Overcrossing and Highway 880/237 Interchange proceed, the photo will require update. In addition to a 2004 update, the Towill proposal includes provisions for periodic updates for specific project areas through 2006. At this time, staff is recommending completion of a 2004 update and will evaluate the additional phases at a later date. Funding for this update is available in CIP No. 8112 Geographic Information System.

RECOMMENDATION: Authorize the City Manager to execute an agreement with Towill Inc., for orthophotography in an amount not to exceed \$63,200, subject to approval as to form by the City Attorney.

XX. CLAIMS AND DEMANDS (None)

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, FEBRUARY 3, 2004, AT 7:00 P.M.**

CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
January 6, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

1. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

(Pursuant to Government Code Section 54957)

Title: City Manager

2. CONFERENCE WITH LABOR NEGOTIATOR

(Pursuant to Government Code Section 54957.6)

Unrepresented Employee: City Manager

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES: December 9 and 16, 2003

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

Commendations:

- Water Awareness Poster Contest (sponsored by the Bay Area Water Users Association)
Aaron Cayabyab, 3rd place in the 5th Grade Division
Angelica Lee, 2nd place in the 5th Grade Division
Emily Dang, 2nd place in the 6th Grade Division

Proclamations

- Arlene DeLeon, Traffic Engineer, Retiring from City of Milpitas

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. APPROVAL OF AGENDA

- XI. CONSENT CALENDAR (Items with Asterisks)**
- XII. PUBLIC HEARINGS (None)**
- XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**
- RA1. CALL TO ORDER BY THE MAYOR**
- RA2. ROLL CALL**
- RA3. APPROVAL OF MINUTES:** December 16, 2003
- RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)**
- RA5. Review Progress Report on Library Project (Staff Contact: Greg Armendariz, 586-3220)**
- *RA6. Approve Agreement: Hardison, Komatsu, Ivelich & Tucker: Site Plan Options for Health Clinic/Senior Housing Development (Staff Contact: Blair King, 586-3060)**
- *RA7. Approve Contract with Dana Property in the Amount of \$12,000 for Appraisal of Two Separate Properties: APN Nos. 86-12-15, 16, and 20; and 86-12-10 (Staff Contact: Steve Mattas, 586-3040)**
- RA8. AGENCY ADJOURNMENT**
- XIV. REPORTS OF OFFICERS AND BOARDS**
- City Council**
- * 1. Approve the Mayor's Appointments to the Community Advisory Commission and Senior Advisory Commission and Reappointments to the Telecommunications Commission: Mayor Esteves**
- XV. UNFINISHED BUSINESS**
- 2. 2004 Commissioner's Recognition Event (Friday, July 23, 2004) – Approve Caterer, Budget and Group Gift for Event (Staff Contact: Jennifer Tagalog, 586-3206)**
- XVI. NEW BUSINESS**
- 3. Approve Rental Facility Use Guidelines Revisions and Fee Structure for City Hall (Staff Contact: Gail Blalock 586-3005, Bonnie Greiner 586-3227; and Jennifer Tagalog 586-3206)**
- XVII. ORDINANCE**
- * 4. Adopt Ordinance No. 22.3, Amending Title V, Chapter 1 of the Milpitas Municipal Code to Update the City's Disaster Council and Add Citizen Corps Duties (Staff Contact: Americo Silvi, 586-2810)**
- XVIII. RESOLUTION**
- * 5. Approve the Joint Powers Agreement, with Amendments, with the Bay Area Employee Relations Service (Staff: C. Rosenquist, 586-3082)**
- XIX. BIDS AND CONTRACTS**

- * 6. **Approve Contract Change Order and Approve Agreement Amendment: Bay Area Coating Consultant Services, Hillside Water System Improvements (Project No. 7083) (Staff Contact: Steve Erickson, 586-3317)**
- * 7. **Approve Amendment Agreement with GSS Consulting: Various CIP Projects (Staff Contact: Doug De Vries, 586-3313)**
- * 8. **Approve Plans and Specifications: Interim Senior Center Interior and Kitchen Improvements (Project No. 8151): B.A. Zuhdi Consulting Engineers (Staff Contact: Mark Rogge, 586-3257)**
- * 9. **Approve Contract for Security Services: (Staff Contact: Eddie Loreda, 586-2662)**
- *10. **Award Bid for Annual Public Works Garment Purchase (Staff Contact: Lou Zenzen, 586-3161)**

XX. CLAIMS AND DEMANDS

- *11. **Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Lou Zenzen, 586-3161)**

XXI. ADJOURNMENT in Honor of Michael Mihalakis, U.S. Soldier and Milpitas High School Graduate Killed in Iraq

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, JANUARY 20, 2004, AT 7:00 P.M.**

**CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
January 6, 2004
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard**

XII. PUBLIC HEARINGS (None)

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: December 16, 2003

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

RA5. REVIEW PROGRESS REPORT ON LIBRARY PROJECT (STAFF CONTACT: GREG ARMENDARIZ, 586-3220)

BACKGROUND: The Library Subcommittee and staff are working on various pre-design elements of the new Library Project. A progress report on these pre-design tasks and upcoming project milestones will be presented by staff at the Council meeting.

RECOMMENDATION: Note receipt and file Library Report progress report.

***RA6. APPROVE AGREEMENT: HARDISON, KOMATSU, IVELICH & TUCKER: SITE PLAN OPTIONS FOR HEALTH CLINIC/SENIOR HOUSING DEVELOPMENT (STAFF CONTACT: BLAIR KING, 586-3060)**

BACKGROUND: Staff, with concurrence of the City Council, held informal discussions with Santa Clara County regarding joint development of a County Health Clinic and a Senior Affordable Housing project on City-owned property located at 163 North Main Street. In order to determine if the proposed uses will fit on the subject site, the firm of Hardison, Komatsu, Ivelich & Tucker (HKIT) has been retained to prepare basic alternative site plans and cost estimates. HKIT is familiar with the site and is a member of the design team preparing the Fair Oaks mixed use health clinic/housing project. HKIT is the only firm familiar with the County's health clinic standards that meet the accelerated schedule proposed for receipt of the required deliverables. The proposed fee is not to exceed \$15,000. The fee is considered reasonable for the work involved and will be paid from Redevelopment affordable housing set-aside funds. There are sufficient funds.

RECOMMENDATION: Authorize the Executive Director to enter into an agreement with Hardison, Komatsu, Ivelich & Tucker (HKIT) with the fee not to exceed \$15,000 for the preparation of alternative health clinic/senior housing site plans.

***RA7. APPROVE CONTRACT WITH DANA PROPERTY IN THE AMOUNT OF \$12,000 FOR APPRAISAL OF TWO SEPARATE PROPERTIES: APN NOS. 86-12-15, 16, AND 20; AND 86-12-10 (STAFF CONTACT: STEVE MATTAS, 586-3040)**

BACKGROUND: The Executive Director has recommended, and the Board has directed, that the Agency should obtain appraisals of the two properties identified as APN Nos. 86-12-15, 16, and 20 and APN No. 86-12-10 as an initial step in determining whether the Agency will make an

offer to purchase the properties. Staff has negotiated a contract with Dana Property to prepare the appraisals. Both parcels are presently vacant.

RECOMMENDATION: Authorize the Executive Director to execute an agreement with Dana Property to prepare the appraisals in an amount not to exceed \$12,000, with the contract subject to approval as to form by the City Attorney.

RA8. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

***1. APPROVE THE MAYOR'S APPOINTMENTS TO THE COMMUNITY ADVISORY COMMISSION AND SENIOR ADVISORY COMMISSION AND REAPPOINTMENTS TO THE TELECOMMUNICATIONS COMMISSION: MAYOR ESTEVES**

BACKGROUND: Mayor Esteves is recommending the following appointments and reappointments:

Community Advisory Commission: Move Craig Ranker from Alternate 2 to Alternate 1 (term expiring January 2005); move Chris Lee from Alternate 3 to Alternate 2 (term expiring January 2008); move Nestor Luna from Alternate 4 to Alternate 3 (term expiring January 2008); and appoint Jenifer Lind to the Alternate 4 position (term expiring January 2005).

Senior Advisory Commission: Appoint Ed Connor to the Alternate 2 position, with a term expiring December 2005.

Telecommunications Commission: Reappoint Niranjan Gupta, Dinesh Gupta, M. Idrees Munir, Vishnu Mathur, and Aaron Ettinger each to new two-year terms expiring January 2006.

Included in the Council's agenda packets are copies of current applications for these commissions.

RECOMMENDATION: Approve the Mayor's appointments and reappointments.

XV. UNFINISHED BUSINESS

2. 2004 COMMISSIONER'S RECOGNITION EVENT (FRIDAY, JULY 23, 2004) – APPROVE CATERER, BUDGET AND GROUP GIFT FOR EVENT (STAFF CONTACT: JENNIFER TAGALOG, 586-3206)

BACKGROUND: At the September 16, 2003, City Council meeting, the Council approved holding the annual Commissioner's Recognition on July 23, 2004, at the City Hall Plaza area. The Council also directed staff to survey City Commissioners as to their preference for the type of event (dessert social, appetizers, BBQ, sit-down dinner) and the gift (a gift commemorating the City's 50th Anniversary or a 50th Anniversary gift to the City in lieu of individual gifts) and to bring the results back to the Council for final determination.

A survey was mailed to all Commissioners and follow-up phone calls were made to ensure that all of the Commissioners input was received. The results are as follows:

Food Options:

Appetizer Social	39
Dessert Bar Social	6
BBQ Buffet	44
Sit-Down Dinner	41

Gift Options:

Plaque	14
Select gift from 3 options	29
Forgo individual gift/plaque and allot monies towards a group gift to the City for its 50 th Anniversary	87

Commissioner's choice totaling 44 was for the option of having a BBQ dinner. Staff received pricing quotes from several BBQ restaurants in the area with the following results. The below quotes are based on 225 people.

Sam's BBQ	\$4,846.00
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(Includes baby-back pork ribs, chicken, BBQ beef brisket, potato salad, green salad, garlic bread, sodas/water, and pies for dessert)

Armadillo Willy's	\$4,113.00
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(Includes baby back ribs, chicken, roast pork, baked beans, potato salad, corn bread muffins, sodas, and cookies) Veggie patties (veggie option)

Ultimate Barbeque Catering Company	\$4,311.00
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(Includes baby back ribs, green salad, potato salad, corn on the cob, garlic bread, sodas, and dessert) Garden burgers (veggie option) *BBQ would occur on site.

Rib Crib	\$3,993.75
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(Includes ½ pound of chicken and 2 ribs per person, beans, potato salad, bread & buns, and iced tea/lemonade, and cobbler) Garden Salad and veggie burgers (veggie option) *BBQ would occur on site.

Quincy's BBQ	\$4,799.00
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(Includes BBQ chicken and ribs, baked beans, potato salad, corn muffin, cobbler, and sodas)

Please note: At the September 16, 2003, Council meeting, Vice Mayor Dixon suggested staff contact the Santa Clara County Firefighters to get a quote from them. Staff attempted to contact the Santa County Firefighters, however, was informed they no longer provide catering services.

Staff also contacted the Milpitas Unified School District to inquire on their menu and they do not offer a BBQ option on their catering menu.

In addition, staff contacted Erik's Deli in Milpitas and they did not offer a comparable BBQ menu selection.

A total of \$15,000 is budgeted for this event to include meals, gift/plaque, invitations, certificates/certificate holders, and other necessary supplies.

The proposed budget would be as follows:

Food 225 X \$18.28	\$4,113
Group Gift/Plaque	\$6,000
Rental Equipment (tables, chairs, table clothes, etc.)	\$3,507
Misc. (invitations, certificates/holders with 50th logo, etc.)	\$1,380

RECOMMENDATION:

1. Select Armadillo Willy's due to the fact they are reasonably priced and are a well-known quality restaurant.
2. Contribute \$5,000 towards the purchase of the Cartwheel Sculptures Art, which will be displayed near City Hall, and \$1,000 towards a plaque to be displayed near the Cartwheel Sculptures acknowledging the gift from the Commissioners to the City for Commissioner's Recognition on Friday, July 23, 2004.

XVI. NEW BUSINESS

3. APPROVE RENTAL FACILITY USE GUIDELINES REVISIONS AND FEE STRUCTURE FOR CITY HALL (STAFF CONTACT: GAIL BLALOCK 586-3005, BONNIE GREINER 586-3227 AND JENNIFER TAGALOG 586-3206)

BACKGROUND: The City has been receiving requests from groups and individuals for use of City Hall facilities and the adjacent outdoor areas. Currently there are no set established facility use guidelines or fees structures. Staff has researched other cities in the Bay Area who have comparable rental facilities and created guidelines and a fee structure for Council consideration.

In addition, staff has made some revisions and additions to the Facility Use Guidelines (i.e. non-profit group guidelines, provide more detailed clarification in certain areas, addition of special event policy, and modification of the cancellation policy.)

Included in the Council's agenda packets for review are a copy of the revised City Facility use Rules and Regulations and fee structure for City Hall Council Chambers, Rotunda, Patio/Grass areas, and Amphitheater.

RECOMMENDATION: Approve proposed City Hall fee structure and Revised Facility Use Rules and Regulations.

XVII. ORDINANCE

***4. ADOPT ORDINANCE NO. 22.3, AMENDING TITLE V, CHAPTER 1 OF THE MILPITAS MUNICIPAL CODE TO UPDATE THE CITY'S DISASTER COUNCIL AND ADD CITIZEN CORPS DUTIES (STAFF CONTACT: AMERICO SILVI, 586-2810)**

BACKGROUND: This proposed ordinance revision, to add Citizen Corps duties to the Disaster Council's present duties, was introduced at the December 16, 2003, City Council meeting. As proposed, the revised ordinance will be consistent with the Standardized Emergency management Systems (SEMS), Department of Homeland Security recommendations regarding CitizenCorps/Disaster Councilmembership and responsibilities, and with similar ordinance revisions adopted by other cities in Santa Clara County. Further, it postures Milpitas for future CitizenCorps related grant funding. This revised ordinance is now ready for second reading and adoption.

RECOMMENDATION: Waive full reading of the ordinance and adopt Ordinance No. 22.3.

XVIII. RESOLUTION

***5. APPROVE THE JOINT POWERS AGREEMENT, WITH AMENDMENTS, WITH THE BAY AREA EMPLOYEE RELATIONS SERVICE (STAFF: C. ROSENQUIST, 586-3082)**

BACKGROUND: The County of Santa Clara with thirty-eight other public agencies developed a Joint Powers Agreement For Bay Area Employee Relations Services.

The service provides online access to a database of surveyed public entities for data analysis. As one of the members of the Joint Powers Agreement, the City of Milpitas will be able to continue receiving valuable quantitative analysis and reports not readily obtained without significant internal staff resources.

RECOMMENDATION: Adopt resolution approving the Joint Powers Agreement with amendments with the Bay Area Employee Relations Service.

XIX. BIDS AND CONTRACTS

***6. APPROVE CONTRACT CHANGE ORDER AND APPROVE AGREEMENT AMENDMENT: BAY AREA COATING CONSULTANT SERVICES, HILLSIDE WATER SYSTEM IMPROVEMENTS (PROJECT NO. 7083) (STAFF CONTACT: STEVE ERICKSON, 586-3317)**

BACKGROUND: This project was awarded for construction by the City Council on April 1, 2003, to Blocka Construction. The project provides for the replacement of several pumps, valves, equipment controls plus installation of chlorination injection equipment, chlorination facility equipment enclosures, and seismic restraint systems for reservoir tanks. The project is under construction and it is approximately 50% complete.

The water tank interiors at the Tularcitos and Minnis booster stations were recently inspected and it has been determined that the interior lining at both tanks has significantly deteriorated to the point of causing potential localized failures in the steel structure. The repair will require the removal of the existing lining and to recoat the tank interiors. Staff is therefore requesting that a contract change order be issued to include this tank repair work. The recommended cost is not-to-exceed \$299,325.00. It is also recommended that a contingency in the amount of \$30,000.00 be included with this change order for possible additional repairs due to the possibility that corrosion may be found during removal of the old lining.

The City had also previously retained the services of Bay Area Coating Consultants (BAC) for special inspection and testing services related to the recoating of the four booster pump canisters and the water tank exteriors. It is recommended to amend the agreement with BAC to provide special testing and inspection services for the requested interior tank coating work. A not-to-exceed cost for this additional testing and inspection services of \$34,000.00, is recommended.

The total recommended cost of this additional work including inspection and testing is \$363,325.00. It will be necessary to increase the project budget by this amount by authorizing a budget appropriation from the water fund reserves. The required budget appropriation form is included in the Council's agenda packets.

RECOMMENDATION:

1. Authorize staff to approve the contract change order in the amount of \$329,325.00 to Blocka Construction Inc.
2. Approve Agreement Amendment with Bay Area Coating Consultant Services in the amount of \$34,000.00, and authorize the City Manager to execute the amendment subject to approval by the City Attorney.
3. Approve the budget appropriation from the water fund reserves into project No. 7083 for \$363,325.00.

***7. APPROVE AGREEMENT AMENDMENT WITH GSS CONSULTING: VARIOUS CIP PROJECTS (STAFF CONTACT: DOUG DE VRIES, 586-3313)**

BACKGROUND: GSS consulting is currently providing assistance with review and preparation of technical specifications and drawings, project coordination with various City departments and outside agencies, and construction technical support on various Capital Improvement Projects.

Additional services through August 31, 2004, are proposed to include additional project management and scheduling services as well as assistance with the Capital Improvement Program reporting. The negotiated not to exceed amount for such services is not-to-exceed \$137,795, which is considered reasonable for the anticipated services. Sufficient funds are available in the project budgets.

RECOMMENDATION: Authorize the City Manager to execute the Agreement Amendment in the not-to-exceed amount of \$137,795, subject to approval as to form by the City Attorney.

***8. APPROVE PLANS AND SPECIFICATIONS: INTERIM SENIOR CENTER INTERIOR AND KITCHEN IMPROVEMENTS (PROJECT NO. 8151): B.A. ZUHDI CONSULTING ENGINEERS (STAFF CONTACT: MARK ROGGE, 586-3257)**

BACKGROUND: On August 19, 2003, the City Council approved an expanded interior renovation program including an upgraded kitchen for the Interim Senior Center at 540 South Abel Street. Plans and specifications for the subject project have been completed in accordance with the revised approved Capital Improvement Program.

The improvements consist of a new commercial-grade catering kitchen, with separate areas for dishwashing and food storage, which comply with the Santa Clara County Environmental Health Department's standards for the Senior Nutrition Program. Kitchen renovation work includes new floor drains, and flooring, walls, ceilings, cabinetry and modifications to the electrical, mechanical and plumbing systems. Health and safety-related work also includes improvements to the restrooms and utility room. Other interior improvements include the addition of a game room and relocation of staff workstations and storage for better space utilization.

The work will be phased and done after normal usage hours, as necessary to avoid disruption of Senior Center activities. The existing kitchen will be modified so it will remain in service until the new kitchen is complete. After the new kitchen is operating the existing kitchen area will be renovated for dishwashing and food storage.

When the Council approved the expanded kitchen, the staff report indicated that the expansion would result in additional cost. At the following Council meeting, the Community Development Block Grant (CDBG) program was revised to provide a portion of the needed funds. The remainder appropriation of approximately \$70,000 will be necessary to complete the funding.

The engineer's estimate for the interior and kitchen improvements is approximately \$190,000, including a 10% construction contingency. Staff will return to the Council with a funding recommendation when the bid results are known. A copy of the project plan title sheet is included in the Council's agenda packets. Complete plans and specifications are available for review in the office of the City Engineer.

RECOMMENDATION:

1. Approve plans and specifications for the Interim Senior Center Interior and Kitchen Improvements.
2. Authorize advertising for construction bid proposals.

***9. APPROVE CONTRACT FOR SECURITY SERVICES: (STAFF CONTACT: EDDIE LOREDO, 586-2662)**

BACKGROUND: Staff issued a request for proposals (RFP) for security services for the Civic Center in December 2002. Four contractors responded to the RFP and based on staff's recommendation a one-year contract with California Land Management (CLM) was presented to Council and approved on December 17, 2002. Since the one-year contract with CLM has expired and due to inconsistent service and the lack of company support, Staff is recommending entering into a 6 months contract with Allied Security, Inc. one of the four contractors that responded to the RFP.

Funds are available in the Public Works Department operating budget for this contract.

RECOMMENDATION: Award a contract for security services to Allied Security, Inc., for an amount not to exceed \$ 36,182.39 as recommended by staff.

***10. AWARD BID FOR ANNUAL PUBLIC WORKS GARMENT PURCHASE (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: Staff requested quotations from all t-shirt suppliers on Purchasing's bidders list for the annual purchase of garments for all six divisions in the Public Works Department, five responded. The vendors are required to embroider or silkscreen 1,883 garments per the following breakdown: 1074 shirts, 286 sweatshirts, 447 hats and 76 cold weather safety jackets. These garments are required by the Milpitas Employees Association memorandum of understanding, section 34.00, titled UNIFORMS and are required to be worn on a daily basis. The following is the recap of bids received including tax and freight:

<u>Bidder</u>	<u>Amount</u>
Century Graphics	\$27,674.74
B.Y.O.G.	\$28,516.30
Prolific Screen Printing	\$29,250.69
Tome`	\$32,326.76
AMI Marketing	\$34,730.51

Funds are available in the Public Works Department operating budget for this purchase.

RECOMMENDATION: Award the bid for garment purchases to the lowest bidder, Century Graphics in the amount of \$27,674.74.

XX. CLAIMS AND DEMANDS

***11. APPROVE PAYMENT REQUESTS: MISCELLANEOUS VENDORS / CONTRACTORS (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$5,476.00 to Medtronic Physio-Control for annual technical service and maintenance support services of portable defibrillators for the Fire Department. (Funds are available from the Fire Department operating budget for these services.)
2. \$5,306.96 to Target Specialty Products for the purchase selective pre-emergent herbicide that provides control of annual grasses and broadleaf weeds in landscape ornamentals and ground covers for the Landscape Maintenance Division. (Funds are available from the Public Works Department operating budget for this purchase.)

RECOMMENDATION: Approve the purchase requests.

XXI. ADJOURNMENT in Honor of Michael Mihalakis, U.S. Soldier and Milpitas High School Graduate Killed in Iraq

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, JANUARY 20, 2004, AT 7:00 P.M.**